

**DESIGN-BUILD
REQUEST FOR QUALIFICATIONS FOR
FRANKLIN MOUNTAINS STATE PARK
EL PASO COUNTY, TEXAS**

**PROJECT NO. 1111304
WATER SYSTEM DEVELOPMENT – NEW WELL**

ISSUE DATE: May 30, 2024



DUE: July 16, 2024

PRIOR TO: 2:00 PM (CT)

DELIVER TO:

**INFRASTRUCTURE DIVISION
CONTRACTING BRANCH
ATTN: Lyndsi Sandoval
4200 SMITH SCHOOL ROAD
AUSTIN, TX 78744**

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- Exhibit B Insurance Requirements for Design Professional
- Exhibit C Design Criteria Manual and Drawings
- Exhibit D Uniform General Conditions, including Supplementary General Conditions
- Exhibit E Division One – General Requirements, Section 01 00 10, Special Conditions – Design-Build
- Exhibit F HUB Forms
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SECTION ONE – GENERAL PROJECT AND SOLICITATION INFORMATION

1.01 PROJECT INFORMATION, BUDGET AND CONTRACT TIME

Owner is requesting Qualifications and other Solicitation Documents for Design-Build services to perform all Work required for the following Project:

Project Name:	Water Development System – New Well
Project Location:	Franklin Mountains State Park, El Paso County, Texas
Project Number:	1111304

The Project Budget is estimated to be \$2,100,000.00. The Work of this Contract is generally described in [Section Two – Executive Summary](#).

Contract Time: Time is an essential element of the contract. All Work shall be substantially completed no later than eighteen (18) months from written Notice to Proceed with Pre-construction.

Texas Parks and Wildlife Department hereafter referred to as Owner desires to select a Design-Builder (Offeror), as defined in Texas Government Code §2269.353 on the basis of qualifications and other established criteria as set out in this Solicitation. This procurement complies with the state of Texas law, including Texas Government Code Title 10, Subtitle F, Chapter 2269, Subchapter H and under the authority of Texas Parks and Wildlife Code §11.0171. Owner will select the successful Design-Builder that offers best value to the Owner based on the published Evaluation Criteria and on its ranking evaluation. The Design-Build contract will be awarded following a two-step process using qualifications statements, responses to additional information, and lastly, Interviews.

Step 1, Request for Qualifications (RFQ), will result in Owner qualifying a maximum of three (3) Offerors who will be invited to participate in **Step 2**. **Step 2** will consist of Request for Additional Information to include Technical and Cost Proposals as determined by Owner and interviews. Although this *Request for Qualifications* generally describes the criteria in Step 2, only short-listed Offerors shall submit a response to **Step 2** criteria.

Oral interviews (if necessary) will be held after Step 2, to allow offerors the opportunity to highlight the strengths and unique aspects of their responses and provide answers to clarification questions TPWD may have regarding the responses and ask additional questions. The Offeror's Project Manager designated in their response as being the primary "lead" individual coordinating the day- to-day project management during design and construction of the Project will facilitate and conduct the presentation made by the firm during the interview. Scoring from the evaluation criteria, Interviews and reference results–will be the final determining factors in the Owner's ranking of Offerors in order to determine the most qualified Offeror. The Owner will then rank the remaining "most" qualified Offerors and then begin negotiations with the highest-ranked Offeror.

1.02 REQUEST FOR SOLICITATION DOCUMENTS

Solicitation Documents and all addenda are obtained through the Comptroller's website under *Electronic State Business Daily (ESBD)* at <http://www.txsmartbuy.com/sp> link: <https://www.txsmartbuy.com/esbd>

1.03 INSTRUCTIONS AND DUE DATE FOR RESPONSES

The Offeror must submit the following:

1. **one (1) original signature copy** of their Response, stamped "**ORIGINAL**",
2. **one (1) identical digital/electronic version** on Flash Drive in a sealed container.

Responses must be received at the following location prior to the date and time set forth below:

**Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744**

IMPORTANT: ENSURE THAT THE CONTRAINER INCLUDES THE FOLLOWING INFORMATION:

**OFFICIAL RESPONSE FOR PROJECT 1111304 / FRANKLIN MOUNTAINS STATE PARK
WATER DEVELOPMENT SYSTEM – NEW WELL
ATTENTION: Lyndsi Sandoval, Contract Manager,
Infrastructure Division**

DUE DATE:	July 16, 2024
PRIOR TO:	2:00 PM (CT)

RESPONSES RECEIVED ON OR AFTER THE DATE AND TIME STATED ABOVE WILL NOT BE ACCEPTED FOR CONSIDERATION. Offerors are advised that TPWD’s Headquarters Complex does not open until 8:00 A.M. Offerors should plan their delivery method accordingly.

Responses may be mailed or delivered (during normal business hours in person or by Federal Express, Express Mail or other delivery service) to the address referenced above. It is the sole responsibility of the Offeror to ensure timely delivery of its Response. Owner will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service. Electronic only or facsimile Responses will not be accepted.

Responses must include all specified items detailed in the Solicitation Documents.

Limitations on volume of requested information apply equally to single firms and joint venture Offerors, regardless of the number of firms partnering in the joint venture. The individual firms of a joint venture are scored separately on the Evaluation Criteria. Their individual scores are then combined based on the proportion of control that each firm has in the joint venture.

1.04 AUTHORIZED CONTACT PERSONS

The Owner designates the following person as its representative and Primary Point-of-Contact for this RFQ. Offerors shall restrict all contact with the Owner and direct all questions regarding this RFQ, including questions regarding terms and conditions, to the Primary Point-of-Contact:

Lyndsi Sandoval, CTCD, CTCM
Contract Manager
Texas Parks and Wildlife Department
Infrastructure Division
4200 Smith School Road
Austin, Texas 78744
Direct Line: 512-389-8761
Email: INFContracting@tpwd.texas.gov
Copy: lyndsi.sandoval@tpwd.texas.gov

1.05 INQUIRIES AND INTERPRETATIONS.

The Owner will issue any or all addenda no later than seven (7) calendar days prior to the Response deadline. Interpretations or clarifications in any other form, including oral statements, will not be binding on the Owner and should not be relied on in preparing Qualifications. Inquiries regarding this RFQ must be submitted via e-mail to the Point of Contact identified in Article 1.04 of this section and shall be submitted to TPWD no later than **5:00 pm CT, on June 25, 2024**. All inquiries must include contact person, phone number and email address.

1.06 ADDENDA.

Any inquiries/clarifications or interpretations of this RFQ that materially affect or change its requirements will be issued by the Owner as an addendum via the Electronic State Business Daily (ESBD) website at <http://www.txsmartbuy.com/sp>. All such addenda issued by the Owner before the statement of qualifications are due are considered part of the RFQ.

Offeror shall include all signed and dated addendum(s) with their response. Oral changes in the work made during the solicitation period are not binding. **OFFEROR'S FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA MAY RESULT IN REJECTION OF RESPONSE.**

1.07 PROHIBITED COMMUNICATIONS.

Upon issuance of this solicitation, the Owner, its representative(s), or partners will not answer questions or otherwise discuss the contents of this Solicitation with any potential offeror or their representative(s), except for the written inquiries described in Article 1.04. Attempts to ask questions by phone or in person will not be allowed or recognized as valid. Failure to observe this restriction may disqualify Offeror. Offeror shall rely only on written statements issued through or by TPWD's contracting staff. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this solicitation.

1.08 NON-MANDATORY PRE-SUBMITTAL MEETING VIA TEAMS.

A Non-Mandatory Pre-Submittal Meeting will be held at 10:00 AM on **June 18, 2024, via TEAMS, registration required**. Although the pre-submittal meeting is not mandatory, Offerors are strongly encouraged to attend as important information regarding response requirements and the Project will be discussed. TPWD requires that each offeror planning to attend this pre-submittal meeting register using this link: [Link to Pre-Submittal Meeting Sign-Up Form](#).

1.09 SITE VISIT.

A Site Visit will be held on **July 10, 2024 at 10:00AM located at 2900 Tom Mays Access Rd, El Paso, TX 79911**. Although the site visit is not mandatory, Offerors are encouraged to visit the site to become familiar with site conditions and equipment needed to perform services prior to submitting a response. TPWD's Point of Contact for this Site Visit is Park Superintendent, Cesar Mendez, 915-444-9125, cesar.mendez@tpwd.texas.gov.

1.10 ANTICIPATED SELECTION SCHEDULE

TPWD issues RFQ	5/30/2024
Pre-submittal Conference via Microsoft Teams	10:00 AM – 6/18/2024
Last Day to submit inquiries / requests for information	5:00 PM – 6/25/2024
TPWD to issue response to inquiries	6/28/2024
Site Visit	10:00 AM – 7/10/2024
TPWD receives Responses to Step 1	7/16/2024
TPWD evaluates and short lists firms	Week of 7/22/2024
TPWD issues Step 2 - Request for Additional Information to Short-Listed Firms	Week of 8/5/2024
TPWD receives responses to Step 2 - Request for Additional Information	8/19/2024
TPWD evaluates Step 2 submissions	Week of 8/26/2024
TPWD issues invitation to Short-listed firms to attend oral interviews (if necessary)	9/3/2024
TPWD interviews short listed firms (if necessary)	Week of 9/9/2024
Notification to selected Design-Build Firm	September 2024
TPWD awards Design-Build Contract	October 2024

1.11 HISTORICALLY UNDERUTILIZED BUSINESS SUBCONTRACTING PLAN (HSP)

In accordance with Texas Government Code, Sections 2161.181-182 and Title 34, Chapter 20, Subchapter B., 20.285 of the Texas Administrative Code (TAC), state agencies must make good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction services, professional and consulting services and commodities contracts with an expected value of \$100,000.00 or more.

In accordance with Texas Government Code §2161.252 and 34 Texas Administrative Code §20.14, the Owner has determined that subcontracting opportunities are probable under this contract, and that the contract value may exceed \$100,000. This probability is based on HUB availability, HUB utilization, geographic location of the Project, the contractual scope of work or other factors.

Due to the nature of this Project Delivery Method, the HSP requirement will be split into two (2) phases requiring one HSP. The first phase HSP will cover the design portion of the project. However, after the design has been accepted by the Owner and before construction services are authorized to commence, the Design-Builder will be required to submit an **HSP Change Request** and applicable Good Faith Effort (GFE) to cover the construction phase of the project. Upon approval, the **second phase HSP Change Request** will be incorporated into the contract.

HSP Phase 1: TPWD will issue an initial HSP goal for the Design Phase of this Project and the Offeror shall submit with their Step 2 documents, an HSP meeting the goal or documentation detailing their GFE to meet the established subcontracting goal. If the Design Phase HSP is not submitted with the Offeror's documents, or the Offeror's HSP does not pass GFE review, the Offeror's Response will not be accepted for consideration.

HSP Change Request Phase 2: Additionally, TPWD has determined that subcontracting opportunities will arise during the Construction Phase of this project; however, the specific scopes and the magnitude of the Work for the Construction Phase cannot be determined until the Design has been sufficiently completed. Prior to entering into the Construction Phase, TPWD will establish an appropriate HSP goal and subcontracting opportunities, and the Design-Builder shall submit an HSP Change Request detailing their GFE to meet the established subcontracting goal.

1.12 SEALED CONTAINER.

Responses must be submitted in a tamper resistant sealed container marked on the outside with the Offeror's name and address, project number, and due date and time. Responses that are not submitted in a sealed container will not be considered. Electronic or facsimile Responses will not be accepted. Responses may be mailed or delivered (during normal business hours in person or by Federal Express, Express Mail or other delivery service) to the address stated in 1.03 of this section.

1.13 MODIFICATIONS TO RESPONSES.

Responses may be modified in writing at any time prior to the due date and time. The person signing the Response shall initial any and all modifications.

1.14 WITHDRAWAL OF RESPONSES TO REQUEST FOR QUALIFICATIONS.

A Response may be withdrawn by Offeror, provided an authorized individual of the Offeror submits a written request to withdraw the Response prior to the time set for receipt of Responses. Withdrawn Responses may be resubmitted, with or without modifications, prior to the due date and time.

1.15 COSTS OF PREPARING THE RESPONSE.

All cost directly or indirectly related to preparation of a Response to this Solicitation, or any oral presentation required to supplement and/or clarify a Response, which may be required by Owner, shall be the sole responsibility of the Offeror.

1.16 TERMS AND CONDITIONS ATTACHED TO RESPONSE.

Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.

1.17 SELECTION OVERVIEW.

In an expeditious manner, an evaluation team comprised of the Owner's Staff will apply the evaluation factors set forth herein to all eligible and responsive Offerors in comparing Qualifications and additional information as requested, and the results of any interviews, recommending the successful top-ranked Offeror. Owner will evaluate and rank each Response with respect to the Evaluation Criteria contained herein. Owner reserves the right to negotiate all elements that comprise the Offeror's Response to ensure that the best possible consideration is afforded to all concerned.

1.18 ACCEPTANCE OF EVALUATION METHODOLOGY.

By submitting the statement of qualification in response to this RFQ, the offeror accepts the evaluation process and acknowledges and accepts that determination of the "best value" firm will

require subjective judgements by the Owner.

1.19 OWNER'S RESERVATION OF RIGHTS.

The Owner may evaluate the Qualifications based on the anticipated completion of all or any portion of the Project. The Owner reserves the right to divide the Project into multiple parts, to reject any and all Qualifications and re-solicit for new Qualifications or proposals, or to reject any and all qualifications and temporarily or permanently abandon the Project. Owner makes no representations, written or oral, that it will enter into any form of agreement with any offeror to this RFQ for any project and no such representation is intended or should be construed by the issuance of this RFQ.

1.20 AWARD AND EXECUTION OF CONTRACT

The Design-Build contract will be awarded following a two-step procedure using qualifications statements, request for additional information, and results of any interviews. **Step 1** will result in Owner qualifying (short-listing) a maximum of three (3) Offerors to respond to Step 2. **Step 2** will consist of request for additional information, site visit, results of any interviews, and negotiation of a cost proposal afterwards.

The Evaluation Team will submit a recommendation to the Owner's Source Selection Authority (SSA) to authorize negotiation and execution of a contract with the top-ranked firm. If Owner is unable to negotiate a satisfactory contract with the top-ranked firm, Owner will formally end negotiations with that Offeror. The Owner will then proceed to negotiate a satisfactory contract with the next Offeror in the order of the selection ranking, until a contract is reached or all negotiations end, provided that Owner, in its complete discretion, may elect to extend the time for negotiations with any Offeror for an additional period of time.

After award of contract is made, the successful Offeror will be required to enter into contract in Design-Build Agreement. The entire content of the Offeror's Response will become a part of the Design-Builder's executed Contract Documents. Failure of the successful Offeror to accept this obligation may result in cancellation of any award. Any damages accruing to Owner as a result of the successful Offeror's failure to contract may be recovered from the selected Offeror.

The Owner will sign the Contract after award and execution of required Contract Documents by the selected Offeror. Contract will not be binding upon Owner until both parties have executed it.

1.21 REJECTION OF RESPONSES

Owner reserves the right to reject any or all Responses and to waive any minor informality in any response or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Offerors).

1.21.1 The following **will** be cause to reject a Response:

- a. Responses which are not signed by an individual empowered to bind the Offeror.
- b. Letter certifying the Offeror's ability to be bonded, from a surety company.
- c. More than one Response for same Work from an individual, firm, partnership or corporation.
- d. Evidence of collusion among Offerors.
- e. Sworn testimony or discovery in pending litigation with Owner which discloses misconduct or willful refusal by contractor to comply with subject contract or instructions of Owner.
- f. Failure to submit HSP at required phases.
- g. Responses received from an Offeror when its principals are currently debarred or suspended by Federal, State or other governmental agencies.

1.22 PROTEST PROCEDURES. Any Actual or prospective Offeror who is aggrieved in connection with this solicitation, evaluation, or award of any contract resulting from this solicitation may formally protest as provided in TPWD’s rules at [TAC, Title 31, Part 2, Chapter 51, Subchapter L, Rule 51.350](#).

1.23 BONDS AND INSURANCE REQUIREMENTS

With its Response, Offeror is required to submit a letter from Offeror’s surety stating Offeror’s ability to acquire bonding as required in the full amount of the contract, either directly or through reinsurance, and ensuring the commitment from its surety to provide such bonding.

The specific bond coverage requirements applicable to this Project are set forth in Article 5 of the Uniform General Conditions and the Supplementary General Conditions, incorporated herein. The Design-Builder must provide the bonds at the time of contract execution, unless Design-Builder provides a security bond or other financial security acceptable to the Owner in the amount of five percent (5%) of the estimated value of the Project Budget for Construction Phase services only. Security Bonds must be submitted within ten (10) calendar days of signing the Design-Build Contract. In this situation, the Design-Builder shall provide the performance and payment bonds at the time of the execution of executed GMP for Construction Phase services.

All bonds required by the Contract Documents shall be obtained from each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to Owner, on Owner’s form, and in compliance with the relevant provisions of the Texas Insurance Code. Payment and Performance bonds shall be in a form provided by the Owner. Owner reserves the right to reject a bond if the surety is not acceptable to TPWD.

Minimum insurance requirements are specified in Article 5, section 5.2 of the Uniform General Conditions, and Supplementary General Conditions, incorporated herein. **Builder’s Risk is not required to be submitted prior to commencement of the construction phase.**

Insurance requirements for professional services are found in [Exhibit B – Owner’s Insurance Requirements for Design Professional](#).

1.24 TYPE OF CONTRACT.

Any contract resulting from this solicitation will be in the form of the Owner’s Standard Design-Build Agreement with the Contractor, a copy of [Exhibit A – Pro Forma Design-Build Agreement](#) will be provided at Step 2. TPWD reserves the right to include the offeror’s response or any part or parts of the selected proposal in the final contract.

1.25 ELIGIBLE OFFERORS.

The Offerors must be a sole proprietorship, partnership, corporation or other legal entity or team that includes an architect and/ or engineer and a construction contractor. (This does not preclude an Offeror from using consultants.) The Owner will contract only with the individual firm or formal organization that submits a Statement of Qualification.

1.26 LEGAL STATUS OF OFFEROR.

The Response and any subsequent supporting documents and the Contract must be executed in the Offeror’s full name and legal entity status by an authorized representative of the Offeror and accompanied by sufficient documentation. Sufficient documentation must clearly indicate not only the legal name and entity status of Offeror, but also the capacity and authority of the person signing on behalf of Offeror. Accordingly, a partnership/joint venture must file its partnership/joint venture agreement, a corporation must file its articles and bylaws, a limited liability company must file its certificate of organization and article of organization and regulations, and a limited partnership must file not only limited partnership agreement and the certificate of limited

partnership, but also the documentation for its general partner, and any Offeror must file a copy of any assumed name certificate, or such limited portion of such documents reasonably establishing signature authority. Such documentation shall be submitted with the Response.

1.27 TEXAS PUBLIC INFORMATION ACT.

Information the Offeror provides to Texas Parks & Wildlife in response to this solicitation will be considered public and subject to disclosure under the Texas Public Information Act. However, certain information may be confidential and fall under an exception to disclosure under the Public Information Act such as proprietary information, trade secrets, and certain commercial and financial information where disclosure might cause *"substantial competitive harm to your business"*. If the Offeror believes that his response to this solicitation contains confidential information in those categories, the Offeror must specifically document this at the top or bottom of each page that contains the information the Offeror considers confidential. The Offeror's documentation must include a statement that confidential information is contained on that page, refer to its exact location on the page, and describe the specific nature of the exception to the Texas Public Information Act that the Offeror believes applies to this information, i.e., copyrighted, trade secret, proprietary, financial etc. A general disclaimer that the Offeror's response contains confidential information will not be sufficient to meet this requirement. **If such documentation is not provided, Texas Parks and Wildlife Department will assume that all information provided in the response to this solicitation is releasable under the Act.**

TPWD will submit a request for an opinion from the Office of the Attorney General prior to disclosing any document designated as "Confidential". The Offeror shall then have the opportunity to assert its basis for non-disclosure to the Office of the Attorney General; however, it is the sole responsibility of the Offeror to monitor such proceedings and make timely filings. TPWD strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of proposal information. TPWD or its employees shall not in any way be liable or responsible for the disclosure of any such records, or any part thereof, if disclosure is required under the Public Information Act or otherwise by law.

1.28 STATE REGISTRATION OF DESIGN PROFESSIONAL FIRMS.

Offerors are advised that the Texas Board of Architectural Examiners and the Texas Board of Professional Engineers requires that any entity providing architectural/engineering services to the public must register with the appropriate State board. An entity is defined as a sole proprietorship, firm, partnership, corporation or joint stock association. All documents pertaining to this project shall be signed and sealed by a professional Architect/Engineer registered in the state of Texas. **Professional shall be licensed in their respective field in accordance with all State requirements.**

1.29 PROFESSIONAL SERVICES.

Offeror shall secure any required services that are defined as professional services under Texas Government Code Title 10, Subtitle F, Chapter 2254, Subchapter A: PROFESSIONAL AND CONSULTING SERVICES, also known as the Professional Services Procurement Act (for example: registered professional land surveyors, professional architects and professional engineers) using the qualifications-based selection process prescribed by that Chapter. (Note: It is a violation of State Law to solicit Bids for professional services.). Furthermore, Texas Government Code, Section 2269.307(b) requires that each firm must certify to the governmental entity that each architect or engineer was selected based on demonstrated competence and qualifications, in the manner provided by 2254.004.

1.30 PREVAILING WAGE DETERMINATION.

Offerors are advised that the Federal Prevailing Wage Law will be administered in accordance with the policies and procedures set forth in the Davis Bacon Act. Refer to Uniform General Conditions, incorporated herein.

1.31 INDEMNIFICATION.

Offeror agrees to defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Offeror or any agent, employee, subcontractor, or supplier of Offeror in the execution or performance of any agreements or other contractual arrangements which may result from the submission of Offeror's Qualifications.

OFFEROR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO OFFEROR'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE OFFEROR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO OFFEROR, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY OFFEROR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND OFFEROR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. OFFEROR AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

1.32 CERTAIN PROPOSAL AND CONTRACTS PROHIBITED:

Under Section 2155.004, Texas Government Code, a state agency may not accept a qualification or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the qualifications/proposal or contract is based. **All vendors must certify their eligibility by acknowledging the following statement, "Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate."** If a state agency determines that an individual or business entity holding a state contract was ineligible to have the contract accepted or awarded as described above, the state agency may immediately terminate the contract without further obligation to the vendor. This section does not create a cause of action to contest a proposal or award of a state contract.

1.33 U. S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM.

By submitting a response, the Design-Builder and Design Professional certifies and ensures that it utilizes and will continue to utilize, for the term of the Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- a. All persons employed to perform duties within Texas during the term of the Contract; and

- b. All persons (including subcontractors) assigned by the Design Professional to perform work pursuant to the Contract, within the United States of America.

The Design-Builder and their consultants shall provide, upon request of Texas Parks and Wildlife Department, an electronic or hardcopy of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Design-Builder, and Design-Builder's sub consultants as proof this provision is followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Design-Builder shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

1.34 ENERGY POLICY AND CONSERVATION ACT.

Contractor shall comply with the mandatory standards and policies related to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat.871).

1.35 BUY AMERICAN ACT.

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material. (b) The Contractor agrees that only domestic construction material will be used by the contractor, subcontractors, materialmen, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in this contract.

1.36 BUY TEXAS AFFIRMATION.

In accordance with Section 2155.4441 of the Texas Government Code, Offeror agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

1.37 INSPECTION, CONSTRUCTION MATERIALS TESTING AND BUILDING COMMISSIONING.

Owner will provide or contract for, independently of the Design-Builder, inspection services and testing of construction as specified by the Design Professional of Record.

Awarded Design-Builder will be required to provide coordination of these services, as required by the Owner-approved Quality Assurance Plan.

1.38 TEXAS ETHICS COMMISSION INTERESTED PARTIES DISCLOSURE FORM.

In accordance with Section 2252.908 of the Government Code, the awarded Design-Builder must use the Texas Ethics Commissions Application to enter the required information on Form 1295. Awarded Design-Builder shall print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized.

The completed Form 1295 with the certification of filing must be submitted within ten (10) calendar days following notice of selection. Failure to timely meet this requirement may result in disqualification of the response. In such circumstances, TPWD shall be authorized to proceed with award to the next highest ranked Offeror. Additional information can be found at:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

1.39 ACKNOWLEDGEMENTS.

Each Offeror, in submitting a response to this Request for Qualifications, understands and agrees that this RFQ is predicated on the Owner's anticipated requirements for this Project, and that the Owner has made no representation, written or oral, that any such requirements be furnished under a contract arising in connection with this RFQ. Furthermore, each Offeror, in submitting a response to this Request for Qualifications, understands and agrees that all costs incurred by the Offeror in connection with the entire selection process hereunder shall be at the sole risk and responsibility of the Offeror.

1.40 RESERVED

END OF SECTION

SECTION TWO – EXECUTIVE SUMMARY

2.01 MISSION STATEMENTS

TEXAS PARKS AND WILDLIFE DEPARTMENT: To manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations.

STATE PARKS DIVISION: To manage state parks and historic sites to conserve natural and cultural resources, provide recreational and educational opportunities, and foster an understanding of the diversity of Texas' lands and heritage for all generations.

2.02 SITE PURPOSE

Site Purpose:

Franklin Mountains State Park is the largest urban state park in the lower forty-eight states with an area of approximately 27,000 acres of land. The Franklin Mountains State Park is the focal point for outdoor activities in the City of El Paso, Texas. The newest development, Franklin Mountains Visitor Center, is aiming to reinforce and connect citizens and visitors with the history, heritage, and regional culture while educating about stewardship and conservation of natural resources.

A primary goal of the current project is to provide a reliable and continuous source of water for the Visitor Center. Currently, for the Visitor Center to operate, the Park staff is hauling water weekly or biweekly, depending on the visitation.

2.03 PROJECT OVERVIEW

The project will include:

- Well development.
- Pump house, pressure tank, treatment system – if required by water well sampling.
- Electrical wiring/controls and all associated equipment.
- Piping, wiring and controls to provide a fully functional water system complete\ in place.
- Connection to the Visitor Center.

2.04 PROJECT SCOPE AND DELIVERY STRATEGY

The Design-Builder shall furnish all labor, tools, equipment, materials, connections, and incidentals necessary for new water well, complete in place with pump, pump control panel, wellhead slab, well building, electrical panels, disinfection equipment, and controls, connection to an existing pump system, integration of all controls and operations and secure all permits required by the water Well Driller Board, TCEQ, and local Ground Water Conservation District as outlined in the Contract Documents.

The Design-Builder should visit the site before bidding on the project to verify existing conditions. The site is located at 2900 Tom Mays Access Rd, El Paso, TX 79911.

Upon completion of the work and final acceptance by the Owner, the Design-Builder shall furnish the Owner a one-year workmanship warranty, operation, and maintenance (O&M) manual for all equipment and items provided, plus any manufacturer's written warranties. Refer to [**Exhibit C – Design Criteria Manual and Drawings**](#)

2.05 SCOPE OF PROFESSIONAL SERVICES

The phases for professional services include but not limited to: Design and Construction Documents, Construction Administration and Warranty performance. Professional services required could include, but are not limited to the following:

- Additional Geotechnical investigation as determined by the Design-Builder's team (preliminary geotechnical investigation has been performed and is included in the Design Criteria Manual)
- Additional topographical surveying and SUE services as determined by the Design-Builder's team (pdf of TPWD-completed survey is included in the Design Criteria Manual)
- Civil Engineering (including roadway, bridge and paving design, grading and drainage design, water and wastewater design)
- Structural Engineering, Electrical, and Hydrogeologist
- Cost Estimating
- Required permitting and fees, including but not limited to those required by Texas Commission on Environmental Quality (TCEQ), Groundwater Conservation District, Texas Pollutant Discharge Elimination System (TPDES), TDLR for Architectural Barriers registration of project and anything applicable to project location.
- Third-party Construction Materials Testing **will be procured by TPWD based on scope developed by the Design Professional of Record.**

2.06 DESIGN CRITERIA MANUAL

Water well must be drilled per the scope of work, TCEQ requirements and with a register water well driller. Refer to [Exhibit C – Design Criteria Manual and Drawings](#)

END OF SECTION TWO

SECTION THREE - EVALUATION CRITERIA

All responses received for **STEP 1** will be reviewed, evaluated and ranked. The Owner will qualify (short-list) no more than three (3) Offerors to be eligible to proceed to **STEP 2** of the evaluation and selection process. Offerors shall provide responses to **STEP 1 ONLY**, by the Response due date and time stated herein (reference Section One – Instruction and Due Date for Responses, 1.03).

Responses for **STEP 1** must be received in a sealed container and labeled on the outside as shown below. Responses that are not submitted in sealed containers will not be considered. Each Container shall include the required envelopes listed below.

**Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744**

IMPORTANT: ENSURE THAT THE CONTRAINER INCLUDES THE FOLLOWING INFORMATION:

**OFFICIAL RESPONSE FOR PROJECT 1111304 / FRANKLIN MOUNTAINS STATE PARK
WATER DEVELOPMENT SYSTEM – NEW WELL
ATTENTION: Lyndsi Sandoval, Contract Manager,
Infrastructure Division**

RESPONSE to Step 1 must include:

- | | | |
|---|--|---------------|
| ▪ | <input type="checkbox"/> Item 1: Execution of Response – Found in Section 5 | Pass/Fail |
| ▪ | <input type="checkbox"/> Item 2: Offeror’s Financial Capability | Pass/Fail |
| | ○ Letter from Surety – Ability to acquire required Bonding | |
| | ○ Dun & Bradstreet (D&B) Business Information Report | |
| ▪ | <input type="checkbox"/> Item 3: Acceptable Documentation | Pass/Fail |
| ▪ | <input type="checkbox"/> Item 4: Statements of Interest and Availability | 10 points max |
| ▪ | <input type="checkbox"/> Item 5: Project Experience | 40 points max |
| ▪ | <input type="checkbox"/> Item 6: Team Experience and Structure | 40 points max |
| ▪ | <input type="checkbox"/> Item 7: Project References | 10 points max |

The Offeror must submit one **(1) original signature copy of its Response**, stamped "ORIGINAL", and **(1) digital/electronic version** on a Flash Drive in a sealed container.

Item 1:**Execution of Response** **Pass/Fail**

Offeror must submit a fully executed Execution of Response, found in **Section 5** of this RFQ. Offeror shall fully complete the form leaving - no blanks.

Offeror must submit:

- Fully executed *Execution of Response* Form (found in **Section 5** of this RFQ). Offerors is required to submit all pages of the *Execution of Response* Form.

Item 2: Offeror's Financial Capability Pass/Fail

The Offeror must provide evidence of financial capability and stability. Offeror's financial capability must be appropriate to the size and scope of the project.

Offeror must submit:

Attach a letter of intent from a surety company indicating your firm's ability to bond for the entire construction cost of the project. The surety shall acknowledge that the firm may be bonded for each stage/ phase of the project, with a **potential maximum construction cost of \$2,100,000**. Bonding requirements are set forth in the Agreement and the Uniform General and Supplementary Conditions, incorporated herein. Letter should also include total bonding capacity, available bond capacity and current backlog.

Attach a copy of its Dun & Bradstreet (D&B) Business Information Report. The report must include Respondent's Viability Score and the Portfolio Comparison Score or similar ratings.

Item 3: Acceptable Documentation Pass/Fail

Offeror must submit all documents required by this solicitation. Failure to submit all required documents (including those identified in other Evaluation Criteria) with acceptable responses and information meeting the applicable requirements of those documents may cause Offeror to be deemed "non-responsive" and disqualified. Offeror shall also comply with page number limitations requested in the Response Requirements of the solicitation.

Response Requirements in addition to those outlined in other Evaluation Items include the following information on your firm for the past five (5) fiscal years:

- 3.1. Legal name of the company as registered with the Texas Secretary of State. Provide sufficient documentation of Offeror's legal name and entity status signed by an authorized representative of the Offeror which clearly indicates not only the legal name and entity status, but also the capacity and authority of the person signing on behalf of Offeror. Accordingly, a partnership/joint venture must file its partnership/joint venture agreement; a corporation must file its articles and bylaws; a limited liability company must file its certificate of organization and article of organization and regulations; and, a limited partnership must file not only limited partnership agreement and the certificate of limited partnership, but also the documentation for its general partner. Offeror must file a copy of any assumed name certificate, or such limited portion of such documents reasonably establishing signature authority, as applicable.
- 3.2. Company description.
- 3.3. Physical address of the office that will be providing services.
- 3.4. Ownership, firm organization, key personnel and stability of firm
- 3.5. Mailing address
- 3.6. Telephone and facsimile numbers
- 3.7. E-mail address of company's primary contact.
- 3.8. Include name, address, and telephone number of person in your

- organization authorized to negotiate contract terms and render binding decisions on contract matters
- 3.9 Names of top management and key employees and each person's duties. Include the background and experience of these employees.
 - 3.10 Staff size and availability
 - 3.11 Number of years in business
 - 3.12 Number of Employees by skill group
 - 3.13 Provide details of any past or pending litigation within the past ten years, or claims filed, against your firm that may affect your performance under a Contract with the Owner.
 - 3.14 Identify if your firm is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If so, specify date(s), details, circumstances, and prospects for resolution.
 - 3.15 Does any relationship exist by relative, business associate, capital funding agreement, or any other such kinship between your firm and any Owner employee, officer or member of the Texas Parks and Wildlife Commission? If so, please explain.
 - 3.16 Identify if your firm is currently for sale or involved in any transaction to expand or to become acquired by another business entity? If so, please explain the impact both in organization and company direction.

Item 4: Statements of Interest and Availability 10 points max

Provide a narrative describing your interest in, availability for, and commitment to our project.

Item 5: Project Experience 40 points max

Provide past history of successful completion of a **minimum of 3 projects - of which 1 should be D-B**, of similar size, scope and complexity utilizing the Design-Build project delivery method.

List the projects in order of priority, with the most relevant project first. The documentation shall be presented in sufficient detail to demonstrate that Design-Build projects are a primary business focus and service provided by the Offeror.

List a minimum of 3 and a maximum of 5 projects that demonstrate experience meeting the following criteria that were successfully completed within the last 10 years.

For each project explain how it relates with the current project and what was the outcome. What challenges you found and how those were solved.

- 5.1 Design-Build project of similar size, scope and complexity. **Criterion 5.1 is valued up to 15 points.**
- 5.2 Design-Build project with the same, or a majority of the same, team proposed for this project. **Criterion 5.2 is valued up to 10 points.**
- 5.3 Project within the same geographical region as this project. **Criterion 5.3 is valued up to 10 points.**

- 5.4 Project for a governmental/municipal entity. **Criterion 5.4 is valued up to 5 points.**

Item 6: Team Experience and Structure 40 points max

Pursuant to Texas Government Code §2269.359 (b), Offeror must:

- select or designate each engineer that is a member of its team based upon demonstrated competence and qualifications, in the manner provided by Section 2254.004; and
- certify to the Owner that each selection or designation was based on demonstrated competence.

Identify the proposed Key Personnel, including proposed subconsultants for all Phases of the contract. For each Key Personnel, provide the following:

- 6.1 Resume, including city of residence. (2-page limit per role). **Criterion 6.1 is valued up to 10 points.**
- 6.2 Statement of project experience, including role on the project, of 3-5 projects. Additional consideration will be given if the statement of project experience aligns with the required experience for this project. **Criterion 6.2 is valued up to 20 points.**
- 6.3 Organizational Chart for Pre-Construction Phase and Construction Phase, (1-page limit for each phase). **Criterion 6.3 is valued up to 5 points.**
- 6.4 Communications Plan describing how your Design-Build team will coordinate with each other and with TPWD on this particular project during the Pre-Construction Phase and Construction Phase. (2-page limit). **Criterion 6.4 is valued up to 5 points.**

Out of State contractors doing business in Texas shall have a Certificate of Authority to do business in Texas. A copy of the certificate shall be submitted with the proposal.

Item 7: Project References 10 points max

Provide references from Owner/Owner's Representative for each of the Projects identified in Item 5 above. Reference letters should include description of the Offeror's response to, and performance on pre-construction services, construction and warranty services after substantial completion. (1-page limit per reference)

Negative responses from Owners and A/E firms that are familiar with contractor's performance, depending on problems encountered, may be grounds for disqualification.



The following pages describes the criteria that will be used in Step 2 of this solicitation.

OFFERORS SHOULD NOT INCLUDE RESPONSES TO STEP 2.

**SHORT-LISTED FIRMS WILL BE INVITED TO SUBMIT
RESPONSES TO STEP 2 CRITERIA**

STEP 2

Three or fewer firms will be shortlisted based on evaluations of written responses to Step 1, Items 1 through 5 and will be eligible for Step 2. Step 2 includes request for additional information.

Criteria for Step 2 is generally described below. OFFERORS SHOULD NOT INCLUDE RESPONSES TO STEP 2 IN RESPONSE TO THIS REQUEST FOR QUALIFICATIONS.

SHORT-LISTED FIRMS WILL BE INVITED TO SUBMIT RESPONSES TO STEP 2 CRITERIA

Responses for **STEP 2** (Items 1 through Item 5 - Phase 1 HUB Subcontracting Plan documents) shall be submitted in a sealed container. The container shall include a label which identifies the Offeror’s name, project number, and due date and time.

RESPONSE TO STEP 2 – REQUEST FOR ADDITIONAL INFORMATION must include:

- Item 1: Execution of Response – Found in [Section 3](#) Pass/Fail
- Item 2: Technical Approach Narrative 40 points max
- Item 3: Ability to Meet Project Schedule 30 points max
- Item 4: Ability to Meet Project Budget 30 points max
- Item 5: Phase 1 HUB Subcontracting Plan Documents Pass/Fail
- *Oral Interview (if necessary)* 25 points max

Item 1: Execution of Response Pass/Fail

Item 2: Technical Approach Narrative 40 points max

2.1 Describe how your Team will provide high-quality **Design** services for this project. Describe what you perceive as the critical design issues. Summarize your Design processes for this project, including your understanding of the Owner’s project goals, approach and scope, as defined in the Design Criteria Manual.

2.1.1 Please provide the design engineer of record for the water and wastewater systems and their qualifications and relevant project experience, including experience with TCEQ permitting.

2.2 Describe how your Team will provide high-quality **Construction** services for this project. Describe what you perceive as the critical construction issues. Describe your strategy to minimizing risk to the project budget. Describe your quality management approach, how you have applied it on previous projects, and how you will apply this project.

2.2.1 Please provide your proposed modular / prefabricated building supplier(s).

Item 3: Ability to Meet Project Schedule **30 points max**

3.1 With the project performance period provided, describe your approach to ensure timely completion of the Design and Construction phases, taking into account internal quality control and Owner design review time, including methods for schedule recovery, if necessary. (1 page limit)

3.2 Provide a critical path schedule with any proposed phasing and milestones for this project, including both the Design and Construction phases. Schedule can be on 11x17 format.

Item 4: Ability to Meet Project Budget **30 points max**

4.1 With the project budget provided, describe how your Design-Build approach will protect the Owner from total project cost overrun exposure. Describe your methodology and process for working with the Design team to maintain the project budget throughout the Design and Construction phases.

4.2 Describe your cost control methods during construction and how you procure qualified subcontractors, confirm scope and cost, and ensure proper payment.

4.3 Provide an estimated total cost of work for Design and Construction phases and include a preliminary cost breakdown for the Construction Phase which includes the following components: General Conditions, Contractor's Construction Phase fee, and Cost of Work.

Item 5: Phase 1 HUB Subcontracting Forms **Pass/Fail**

Oral Interview (if necessary) **25 points max**

END OF SECTION THREE

SECTION FOUR – STATEMENT OF QUALIFICATIONS

FORMAT OF RESPONSE

PREPARATION OF RESPONSES

4.01 Responses. Each Response should be prepared simply and economically, providing a straightforward, concise description of the Offeror’s ability to meet the requirements of this solicitation. Elaborate bindings, colored displays, promotional materials and so forth are not desired. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the Owner’s needs. Vague and equivocal statements will be viewed unfavorably. Offeror shall also comply with proposal requirements of the Solicitation.

4.02 Volume of Information. Limitations on volume of requested information apply equally to single firms and joint venture Offerors, regardless of the number of firms partnering in the joint venture. The individual firms of a joint venture are scored separately on the Evaluation Criteria. Their individual scores are then combined based on the proportion of control that each firm has in the joint venture.

4.03 Format of the Response.

4.03.1. Qualifications shall be prepared simply and economically, providing a straightforward, concise description of the Offeror’s ability to meet the requirements of this RFQ. Emphasis shall be on the quality, completeness, clarity of content, responsiveness to the requirements, and an understanding of TPWD’s needs.

4.03.2. Offerors shall carefully read the information contained in this RFQ and submit a complete response to all requirements and questions as directed. Incomplete Qualifications will be considered non-responsive and subject to rejection.

4.03.3 Qualifications and any other information submitted by offerors in response to this RFQ shall become the property of the Owner.

4.03.4 Qualifications that are qualified with conditional clauses, alterations, items not called for in the RFQ documents, or irregularities of any kind are subject to rejection by the Owner, at its option.

4.03.5 The Owner makes no representation of any kind that an award will be made as a result of this RFQ, or subsequent Request for Additional Information or interview. The Owner reserves the right to accept or reject any or all Qualifications, waive any formalities or minor technical inconsistencies, or delete any items/requirements from this RFQ when deemed to be in Owner’s best interest.

4.03.6 Qualifications shall consist of answers to questions identified in [Section 3](#) of RFQ. Separate each section of the Qualifications by use of a divider sheet with an integral tab for ready reference. Identify the tabs in accordance with the parts under [Section 3](#), which is to be consistent with the Table of Contents. TAB IDENTIFICATION BY NUMBERS ONLY IS NOT ACCEPTABLE.

4.03.7 Failure to comply with all requirements contained in this Request for Qualifications may result in the rejection of the Qualifications.

4.03.8 Qualifications shall be printed on letter-size (8 1/2” x 11”) paper and assembled with spiral-type bindings. Do not use metal ring hard cover binders.

4.03.9 Additional attachments shall not be included with the Qualifications. Only the responses provided by the offeror to the questions identified in **Section 3** of this RFQ will be used by the Owner for evaluation.

4.03.10 Responses shall include a “Table of Contents” and give page numbers for each part the Qualifications.

4.03.11 Number all pages of the Response sequentially using Arabic numerals (1, 2, 3, etc.); the Offeror is not required to number the pages of the HUB subcontracting Plan.

END OF SECTION FOUR

SECTION FIVE - EXECUTION OF RESPONSE

SUBMIT ENTIRE EXECUTION OF RESPONSE FORM WITH RESPONSE

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED, AND RETURNED WITH THE OFFEROR'S QUALIFICATIONS. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE QUALIFICATIONS MAY RESULT IN REJECTION OF THE QUALIFICATIONS.

By signature hereon, Offeror acknowledges and agrees that (1) this RFQ is a solicitation for Qualifications and is not a contract or an offer to contract; (2) the submission of Qualifications by Offeror in response to this RFQ will not create a contract between the Owner and Offeror; (3) the Owner has made no representation or warranty, written or oral, that one or more contracts with the Owner will be awarded under this RFQ; and (4) Offeror shall bear, as its sole risk and responsibility, any cost which arises from Offeror's preparation of a response to this RFQ.

By signature hereon, Offeror offers and agrees to furnish to the Owner the products and/or services more particularly described in its Qualifications, and to comply with all terms, conditions and requirements set forth in the RFQ documents and contained herein.

Offeror represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither the offeror, nor the firm, corporation, partnership, or institution represented by the offeror, or anyone acting for such firm, corporation, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the *Texas Business and Commerce Code*, or the Federal antitrust laws, or (2) communicated directly or indirectly the contents of this proposal to any competitor or any other person engaged in the same line of business as the offeror.

Pursuant to Section 2155.003 of the Texas Government Code, offeror represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the contract.

By signature hereon, the offeror hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code. Making a false statement as to corporate tax status is a material breach of contract.

Offeror certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.

Under Section 2155.0061 of the Texas Government Code, the Offeror certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.

Offeror agrees that any payments due under this contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

Offeror represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA) and its implementing regulations, as each may be amended.

Under Section 161.0085 of the Texas Health and Safety Code, Offeror certifies that the individual or business entity names in the Response or contract is not ineligible to receive the specified contract.

Offeror agrees to comply with *Texas Government Code*, Title 10, Subtitle D, §2155.4441, relating to use of services contracts for products produced in the State of Texas.

By signature hereon, Offeror represents and warrants that:

Offeror is a reputable company regularly engaged in providing products and/or services necessary to meet the terms, conditions and requirements of the RFQ;

Offeror has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the terms, conditions and requirements of the RFQ;

Offeror is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances;

Offeror understands (i) the requirements and specifications set forth in this RFQ and (ii) the terms and conditions set forth in the Contract under which Offeror will be required to operate;

Offeror, if selected by the Owner, will maintain insurance as required by the Contract; Reference Uniform General Conditions, Article 5, incorporated herein.

By signature hereon, Offeror certifies that all statements, information and information prepared and submitted in this document are current, complete, true and accurate. Submitting a response with a false statement or material misrepresentation made during the performance of a contract is a material breach of contract and may void the submitted response and any resulting contract.

Offeror certifies that if a Texas address is shown as the address of the Offeror on this proposal, Offeror qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

If Offeror is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, Offeror certifies that Offeror does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Offeror does not make that certification, Offeror must indicate that in its Proposal and state why the certification is not required.

Offeror certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "*Blocking property and prohibiting transactions with persons who commit, threaten, to commit, or support terrorism*", published by the United States Department of Treasury, Office of Foreign Assets Control.

Section 2252.152 of the Texas Government Code prohibits TPWD from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Offeror certifies that it is not ineligible to receive the contract.

By signature hereon, the offeror acknowledges that *Texas Government Code*, Title 10, Subchapter F, §§ 2252.201-2252.205 requires that all iron or steel products produced through a manufacturing process used in this project must be produced in the United States. By signing this proposal, Offeror certifies that its price represents full compensation for compliance with the requirements of *Texas Government Code*, Title 10, Subchapter F, §§ 2252.201-2252.205.

Offeror represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Offeror shall promptly notify Owner.

Offeror verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Offeror shall promptly notify Owner.

Pursuant to Section 2274.0102 of the Texas Government Code, Offeror certifies that neither it nor its parent company, nor any affiliate of the Offeror or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

By signing this proposal, Offeror acknowledges and understands that the acceptance of funds by the Offeror or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor's Office, Comptroller or other agency of the State of Texas, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. The Offeror further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing access to any information the state auditor considers relevant to the investigation or audit. The Offeror shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through the Offeror and the requirement to cooperate is included in any subcontract it awards.

Offeror represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

Under Section 669.003 of the *Texas Government Code*, Offeror certifies that it does not employ, or has disclosed its employment of, any former executive head of the agency. Offeror must provide the following information in the proposal.

Name of former executive: _____

Name of State agency: _____

Date of separation from State agency: _____

Position with Offeror: _____

Date of employment with Offeror: _____

Under Section 231.006 of the Family Code, the offeror certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate in addition to other remedies set out in 231.006(f).

Offeror represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the Owner during the twelve (12) month period immediately prior to the date of execution of the contract.

Pursuant to *Texas Government Code*, Title 10, Subchapter A, §2155.004 (a), Offeror certifies that neither offeror nor any person or entity represented by offeror has received compensation from TPWD to participate in the preparation of the specifications or solicitation on which this proposal or contract is based. Under §2155.004 (b) of the *Texas Government Code*, Offeror certifies that the individual or business entity named in this proposal or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated, and payment withheld if this certification is inaccurate.

Pursuant to *Texas Government Code*, Title 10, Subchapter A, §2155.004 (b), §2155.006 (c), and Subchapter B, §2261.053 (c), Offeror certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.

“Under Section 2254.004, *Texas Government Code*, the vendor or applicant certifies that each individual or business entity which is an engineer or architect proposed by Offeror as a member of its team was selected based on demonstrated competence and qualifications only.”

Pursuant to Section 2254.0031 of the *Texas Government Code*, which incorporates by reference Section 271.904(d) of the *Texas Local Government Code*, Offeror shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

OFFEROR represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

OFFEROR represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

By signature hereon, Offeror certifies that no member of the Texas Parks and Wildlife Commission, or the Executive Officers of Texas Parks and Wildlife Department, has a financial interest, directly or indirectly, in the transaction that is the subject of the contract.

OFFEROR represents and warrants that if selected for award of a contract as a result of the Solicitation, OFFEROR will submit to TPWD a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the *Texas Government Code*.

Additional information can be found at:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

By signature hereon, Offeror certifies that the individual signing this document and the documents made part of the RFQ is authorized to sign such documents on behalf of the company and to bind the company under any agreements or other contractual arrangements, which may result from the submission of Offeror’s Response.

The rest of this page intentionally left blank. Signatures required on next page

Offeror shall include all signed and dated addendum(s) with their response. Oral changes in the work made during the solicitation period are not binding.

OFFEROR’S FAILURE TO SUBMIT EACH SIGNED AND DATED ADDENDUM(S) WITH THEIR RESPONSE MAY RESULT IN REJECTION OF RESPONSE.

TPWD ADDENDA ARE POSTED AT: <https://www.txsmartbuy.com/esbd>

The Offeror must complete, sign and return this Execution of Response as part of their response. The Offeror’s company official(s) who are authorized to commit to such a response must sign response. Failure to sign and return this form will subject the response to disqualification.

Offeror’s Name: _____

Offeror’s State of Texas Tax Account No: _____
(This 11-digit number is mandatory)

If a Corporation:

Offeror’s State of Incorporation: _____

Offeror’s Charter No: _____

Submitted and Certified By:

(Offeror’s Name)

(Title)

(Street Address)

(Telephone Number)

(City, State, Zip Code)

(Email Address)

(Authorized Signature)

(Date)

END OF SECTION FIVE

SUBMIT ENTIRE EXECUTION OF RESPONSE FORM WITH RESPONSE.

**EXHIBIT A – PRO FORMA DESIGN-BUILD AGREEMENT BETWEEN OWNER AND
DESIGN-BUILD CONTRACTOR**

Will be provided with Step 2 documents.

EXHIBIT B

Owner's Insurance Requirements of Design Professional

1.0 **Definitions.** For purposes of this Contract:

- 1.1 Owner Parties. "Owner Parties" means the State of Texas and any Agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as the Owner. **Owner herein shall mean the Texas Parks and Wildlife Department.**
- 1.2 Design Professional. "Design Professional" shall mean the Landscape Architect, Architect, or Engineer providing the service or work to be performed under this Contract.
- 1.3 Consultant. "Consultant" shall include consultants of any tier.
- 1.4 ISO. "ISO" means Insurance Services Office.

2.0 **Design Professional Insurance Representations to Owner Parties**

- 2.1 It is expressly understood and agreed that the insurance coverages required herein:
 - 2.1.1 Represent Owner Parties' minimum requirements and are not to be construed to void or limit the Design Professional's indemnity obligations as contained in this Contract nor represent in any manner a determination of the insurance coverages the Design Professional should or should not maintain for its own protection; and
 - 2.1.2 are being, or have been, obtained by the Design Professional in support of the Design Professional's liability and indemnity obligations under this Contract. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Design Professional, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Contract.
- 2.2 Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Contract. If the Design Professional shall fail to remedy such breach within five (5) business days after notice by the Owner, the Design Professional will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Design Professional by the Owner. In the event of any failure by the Design Professional to comply with the provisions of this Contract, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Design Professional, purchase such insurance, at the Design Professional's expense, provided that the Owner shall have no

EXHIBIT B

Owner's Insurance Requirements of Design Professional

obligation to do so and if the Owner shall do so, the Design Professional shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

- 2.3 This Exhibit is an independent contract provision and shall survive the termination or expiration of the Construction Contract.

3.0 Conditions Affecting All Insurance Required Herein

- 3.1 Cost of Insurance. All insurance coverage shall be provided at the Design Professional's sole expense.

- 3.2 Status and Rating of Insurance Company. All insurance coverage shall be written through insurance companies authorized to do business in the state in which the work is to be performed and rated no less than A- : VII in the most current edition of A. M. Best's Key Rating Guide.

- 3.3 Restrictive, Limiting, or Exclusionary Endorsements. All insurance coverage shall be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.

- 3.4 Limits of Liability. The limits of liability may be provided by a single policy of insurance but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.

- 3.5 Notice of Cancellation or Material Reduction in Coverage. All insurance coverage shall contain the following express provision:

In the event of cancellation, material change in coverage, or a non-renewal affecting the Owner as certificate holder, thirty (30) days prior written notice shall be given to the certificate holder.

- 3.6 Waiver of Subrogation. The Design Professional hereby agrees to waive its rights of recovery from the Owner Parties with regard to all causes of property and/or liability loss and shall cause a waiver of subrogation endorsement to be provided in favor of the Owner Parties on all insurance coverage carried by the Design Professional, whether required herein or not (except Design Professional's Professional Liability Insurance).

- 3.7 Deductible/Retention. Except as otherwise specified herein, no insurance required herein shall contain a deductible or self-insured retention in excess of \$25,000 without prior written approval of the Owner. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Design Professional's sole risk. The Design Professional shall not be reimbursed for same.

EXHIBIT B

Owner's Insurance Requirements of Design Professional

4.0 **Maintenance of Insurance**. The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Contract and thereafter as required:

4.1 **Commercial General Liability Insurance**

4.1.1 **Coverage**. Such insurance shall cover liability arising out of all locations and operations of the Design Professional, including but not limited to liability assumed under this contract (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.

4.1.2 **Form**. Commercial General Liability Occurrence form (at least as broad as an unmodified ISO CG 0001 0798 or its equivalent).

4.1.3 **Amount of Insurance**. Coverage shall be provided with limits of not less than:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Personal and Advertising Liability	\$1,000,000

4.1.4 **Required Endorsements**

- a. **Additional Insured**. Additional insured status shall be provided in favor of the Owner Parties on ISO forms CG 20 10 or its equivalent.
- b. **Notice of Cancellation or Material Reduction in Coverage**, as required in 3.5, above.
- c. **Primary and Non-Contributing Liability**. It is the intent of the parties to this Contract that all insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to Owner Parties, with Owner Parties' insurance being excess, secondary and non-contributing. This CGL coverage shall be endorsed to provide such primary and non-contributing liability coverage.
- d. **Waiver of Subrogation**, as required in 3.6, above.

4.1.5 **Continuing Commercial General Liability Insurance**. The Contractor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for the duration of the contract and the warranty period.

4.2 **Business Auto Liability Insurance**

4.2.1 **Coverage**. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).

EXHIBIT B

Owner's Insurance Requirements of Design Professional

4.2.2 Form. Business Auto form (at least as broad as an unmodified ISO CA 0001 or its equivalent).

4.2.3 Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000.

4.2.4 Required Endorsements

a. Notice of Cancellation or Material Reduction in Coverage, as required in 3.5, above.

b. Waiver of Subrogation, as required in 3.6, above.

4.3 Workers' Compensation/Employer's Liability Insurance

4.3.1 Coverage. Such insurance shall cover liability arising out of the Design Professional's employment of workers and anyone for whom the Design Professional may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted. USL&H must be provided where such exposure exists.

By signing the Contract or providing or causing to be provided a certificate of coverage, Design Professional is representing to Owner that all employees of the Design Professional who will provide services on the Project will be covered by worker's compensation coverage for the duration of the Project, that the coverage will be based on proper reporting classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier, or in the case of self-insured, with the Texas Department of Worker's Compensation. Providing false or misleading information may subject Design Professional to administrative penalties, criminal penalties, civil penalties or other civil actions.

4.3.2 Amount of Insurance. Coverage shall be provided with a limit of not less than:

<u>Workers' Compensation:</u>	Statutory limits.
<u>Employer's Liability:</u>	
Bodily Injury by Accident	\$1,000,000 Ea. Accident
Bodily Injury by Disease	\$1,000,000 Ea. Employee
Bodily Injury by Disease	\$1,000,000 Policy Limit

EXHIBIT B

Owner's Insurance Requirements of Design Professional

4.3.3 Required Endorsements

- a. Notice of Cancellation or Material Reduction in Coverage, as required in 3.5, above.
- b. Waiver of Subrogation, as required in 3.6, above.

4.4 **DELETED**

4.5 **Professional Liability Insurance**

4.5.1 Coverage. The Design Professional shall carry such professional liability/errors and omissions insurance, covering the services provided under this Agreement and other coverages as further described, acceptable to and approved by Owner. The insurance shall provide professional liability insurance for claims arising from the negligent performance of professional services of any type, including but not limited to design or design/build services as part of the Work to be performed.

4.5.2 Form. This insurance shall include prior acts coverage sufficient to cover all services rendered by the Design Professional and by its consultants under this Contract. It is recognized that this coverage may be provided on a Claims-Made basis.

4.5.3 Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000.

4.5.4 Continuing Professional Liability Insurance. The Design Professional shall maintain such insurance in identical coverage, form and amount for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Contract. The Design Professional shall provide written representation to the Owner stating Work completion date.

5.0 **DELETED**

6.0 **Evidence of Insurance**

6.1 Provision of Evidence. Evidence of the insurance coverage required to be maintained by the Design Professional, represented by certificates of insurance, evidence of insurance, and endorsements issued by the insurance company or its legal agent, and must be furnished to the Owner prior to commencement of Work and not later than ten (10) days after receipt of the Notice of Intent to Award. New certificates of insurance, evidence of insurance, and endorsements shall be provided to the Owner prior to the expiration date of the current certificates of insurance, evidence of insurance, and endorsements.

EXHIBIT B

Owner's Insurance Requirements of Design Professional

- 6.2 Form
- 6.2.1 All liability insurance required herein shall be evidenced by TPWD provided insurance certificate, "Certificate of Insurance".
- 6.3 Specifications. Such certificates of insurance and/or evidence of insurance shall specify:
- 6.3.1 The Owner as a certificate holder with correct mailing address.
- 6.3.2 Insured's name, which must match that on this Contract.
- 6.3.3 Insurance companies affording each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representative of insurance company.
- 6.3.4 Producer of the certificate with correct address and phone number listed.
- 6.3.5 Additional insured status required herein.
- 6.3.6 Amount of any deductibles and/or retentions.
- 6.3.7 Cancellation, non-renewal and material reduction in coverage notification as required by this Contract.
- 6.3.8 Personal Injury contractual liability required herein.
- 6.3.9 Primary and non-contributing status required herein.
- 6.3.10 Waivers of subrogation required herein.
- 6.3.11 The certificate of insurance shall list all exclusions and limitations added by endorsement to the general liability insurance coverage
- 6.4 Required Endorsements. A general liability additional insured endorsement shall also be provided.
- 6.5 Failure to Obtain. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Design Professional's obligation to maintain such insurance.
- 6.6 Certified Copies. Upon request of any Owner Party, the Design Professional shall provide to the Owner a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Owner prior to the expiration of the previous policy.

Commencement of Work. Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Contract, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Design Professional or any consultant from performing any Work until such certificate of insurance, evidence of insurance

EXHIBIT B

Owner's Insurance Requirements of Design Professional

and/or required endorsements are received and approved by the Owner.

7.0 Insurance Requirements of Design Professional's Consultants

7.1 Insurance similar to that required of the Design Professional shall be provided by all consultants (or provided by the Design Professional on behalf of consultants) to cover operations performed under any subcontract Contract. The Design Professional shall be held responsible for any modification in these insurance requirements as they apply to consultants. The Design Professional shall maintain certificates of insurance from all consultants containing provisions similar to those listed herein (modified to recognize that the certificate is from consultant) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.

7.2 The Design Professional is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Design Professional's or its consultant's property shall be the Design Professional's and its consultant's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Design Professional shall not be reimbursed for same. Should the Design Professional or its consultants choose to self insure this risk, it is expressly agreed that the Design Professional hereby waives, and shall cause its consultants to waive, any claim for damage or loss to said property in favor of the Owner Parties.

8.0 **Use of the Owner's Equipment.** The Design Professional, its agents, employees, consultants or suppliers shall use the Owner's equipment only with express written permission of the Owner's designated representative and in accordance with the Owner's terms and condition for such use. If the Design Professional or any of its agents, employees, consultants or suppliers utilize any of the Owner's equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Owner, the Design Professional shall defend, indemnify and be liable to the Owner Parties for any and all loss or damage which may arise from such use.

9.0 **Release and Waiver.** The Design Professional hereby releases, and shall cause its consultants to release, the Owner Parties from any and all claims or causes of action whatsoever which the Design Professional and/or its consultants might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Design Professional and/or its consultants pursuant to this Contract.

Exhibit C
Design Criteria Manual and Drawings

WATER SYSTEM DEVELOPMENT
FRANKLIN MOUNTAINS STATE PARK
Project No. 1111304

STATEMENT OF WORK

SECTION 1 – DESIGN TECHNICAL

- 1.1. Work Required
 - 1.1.1. The contractor shall furnish all labor, tools, equipment, materials, connections, and incidentals for new water well, complete in place with pump, pump control panel, wellhead slab, well building, electrical panels, disinfection equipment, and controls, connection to an existing pump system, integration of all controls and operations and secure all permits required by the water Well Driller Board, TCEQ, and local Ground Water Conservation District as outlined in the Contract Documents.
 - 1.1.2. The contractor should visit the site before bidding on the project to verify existing conditions. The site is located at 2900 Tom Mays Access Rd, El Paso, TX 79911.
- 1.2. Applicable Codes
 - 1.2.1. 2012 International Building Code
 - 1.2.2. 2012 International Mechanical Code
 - 1.2.3. 2012 International Plumbing Code
 - 1.2.4. 2012 International Energy Conservation Code
 - 1.2.5. 2014 National Electric Code
 - 1.2.6. 2012 International Fire Code
 - 1.2.7. ASHRAE 90.1 2013
 - 1.2.8. Texas Accessibility Standards 2012
 - 1.2.9. NFPA 101 Life Safety Code
 - 1.2.10. TCEQ Rules and Regulations
 - 1.2.11. Well Driller Codes and Regulations.
- 1.3. Water System Design
 - 1.3.1. Well Design
 - 1.3.1.1. Locate a well approximately 40' from the existing test hole, drill, and finish a new functioning well for a potable water system meeting TCEQ requirements at Franklin Mountain State Park. The exact location should be coordinated with TPWD.
 - 1.3.1.1.1. Before drilling the well, the contractor shall stake the exact location provide the latitude and longitude and submit to TPWD for approval before drilling.
 - 1.3.1.2. The drilled hole shall be cased with new steel pipe with plain ends and machine beveled for welding, or threaded for coupling, conforming to prime API 5L Grade B Sch 40 pipe, with gravel pack and stainless-steel screen shall be provided below the bottom of the casing with the pump set a minimum of 20' above the bottom of the casing. The pump capacity and pump curve are to be based on the elevation and well yield. The contractor/engineer shall establish and provide the necessary vertical and horizontal control to determine the total head of the system.
 - 1.3.1.3. The well shall have

- 1.3.1.3.1. Adequate capacity for the headquarters and visitor center.
- 1.3.1.3.2. The well pump shall be sized to provide a minimum of approximately 35 GPM at a discharge pressure at the wellhead of 45psi.
- 1.3.1.3.3. Pump column pipe shall be PVC SCH 80 PVC pipe sized for the pump discharge but shall be no less than 4 inches in diameter.
- 1.3.1.3.4. Provide a minimum of one (1) DIP check valve on the column pipe set just below the static water level. The exact location and number will be determined by the contractor/engineer during the design.
- 1.3.1.4. Clean water is expected at approximately 1,150 feet below ground level (BGL). The contractor shall give a turnkey price to the 1,200-foot level. Additionally, provide a price per foot if the drilling is to exceed deeper and shall include all items and incidentals necessary to extend the well.
- 1.3.1.5. The borehole should be drilled using the air rotary or reverse circulation drilling methods with the concurrent conductor or pull-back casing installation (e.g., drill and drive, under-reamer/casing pull-down system) to avoid sloughing issues. The mud rotary method may also be used to ensure a full-length annular seal (i.e., from the gravel pack to the surface) may be installed without sluffing. Whichever method is used, an emphasis should be put on the recovery of representative drill cuttings for logging.
- 1.3.1.6. A full suite of geophysical logs shall be developed following completion of drilling activities for use in the final water well construction design including, but not limited to, an electric log suite, magnetic deviation survey, natural gamma-ray log, sonic log, 4-arm caliper log, focused guard log, and finally optical or acoustic televiwer for confirming the bedrock contact and identifying fractures. This work shall be completed by a water well hydrologist familiar with developing TCEQ-compliant water wells in El Paso County.
- 1.3.1.7. A monitoring well shall be installed per TWDB standards within the existing test borehole. The well shall be used as an observation well during the testing of the permanent well to further characterize the aquifer(s).
 - 1.3.1.7.1. The contractor/engineer shall prepare drawings for submission to TCEQ for approval of the monitoring well and shall include specifications and details as necessary and required by TCEQ.
 - 1.3.1.7.2. The contractor/engineer shall prepare a monitor well plan/program for the use of the well which shall be included in the O&M manual and shall include all forms and tables to be filled out to monitor the well.
- 1.3.1.8. Permanent water well construction design shall meet TCEQ requirements for public water supply systems and at a minimum include the following:
 - 1.3.1.8.1. 16-inch nominal diameter surface casing to a depth of 40 feet.
 - 1.3.1.8.2. Minimum 8-inch inside diameter (I.D.) casing: low-carbon steel blank casing from the ground surface to approximately 20 feet above the static water level and stainless steel below.
 - 1.3.1.8.3. Minimum 8-inch I.D. wire-wrapped stainless-steel screen; slot size dependent on borehole lithology.

- 1.3.1.8.4. Gravel pack from the bottom of the borehole to at least 20 feet above the top of the screen; material and size dependent on borehole lithology.
- 1.3.1.8.5. Annular seal to consist of a 5-foot bentonite seal above the gravel pack followed by a neat cement grout up to the surface.
- 1.3.1.8.6. Contractor/engineer shall provide several taps throughout the system to draw water samples including raw water samples at the wellhead.
- 1.3.1.9. The pump installed in the permanent well should consist of the following:
 - 1.3.1.9.1. A minimum 6-inch diameter submersible pump and an approx. 25 hp motor set approximately 10 to 20 feet above the top of the well screen. The pump should be capable of pumping a minimum of 35 GPM from the wellhead to the water storage tanks upgradient at the visitor center. It shall be up to the contractor/engineer to size all components appropriately with input from TPWD.
 - 1.3.1.9.2. The pump control system should include a dual transducer operating system; one transducer placed in the water storage tanks to activate/deactivate the pump depending on the tank water level and a transducer installed in the sounding tube to deactivate the pump should water levels drop below the pump's safe operating threshold. The contractor/engineer shall minimize the use of PLCs during the design of the pump control and operating system.
 - 1.3.1.9.3. 1-inch I.D. Sch 80 PVC water level sounding tube from the surface to the pump setting with the bottom 40 feet consisting of slotted PVC screen.
- 1.3.1.10. Design shall include but not be limited to:
 - 1.3.1.10.1. Approximately 1,800 LF 4-6" PVC or HDPE water line, valves, air release valves, bore and casing under existing driveways, and all other items necessary to deliver water from the wellhead to the visitor center. The water line shall be set a minimum of 5' outside the edge of the pavement and shall include magnetic tracer tape and above-ground marking posts. If an HDPE pipe is used the contractor will pull a tracer wire with pull boxes as necessary to trace the water line accurately.
 - 1.3.1.10.2. The contractor/engineer shall work with El Paso Electric as necessary to design and install a new electrical service to serve the new water well and all associated equipment and buildings.
 - 1.3.1.10.3. Design a new water system, ground storage tank, booster pumps, and pressure tank to provide potable water to the visitor center. The existing system shall be removed. The contractor shall coordinate transfer or shutdown with the site closely.
 - 1.3.1.10.4. The contractor/engineer shall design and install a new control system to fully integrate the water well operation with the booster pumps and pressure tank system. The design shall minimize the use of PLCs whenever possible and use standard relays and switches.
 - 1.3.1.10.5. Contractor/engineer shall design and provide a water treatment system as necessary (if required by water well sampling and TPWD input) to provide potable drinking water meeting the TCEQ primary drinking water standards and at a minimum shall include a liquid or tablet chlorine dosing system meeting TCEQ requirements located at the well house.

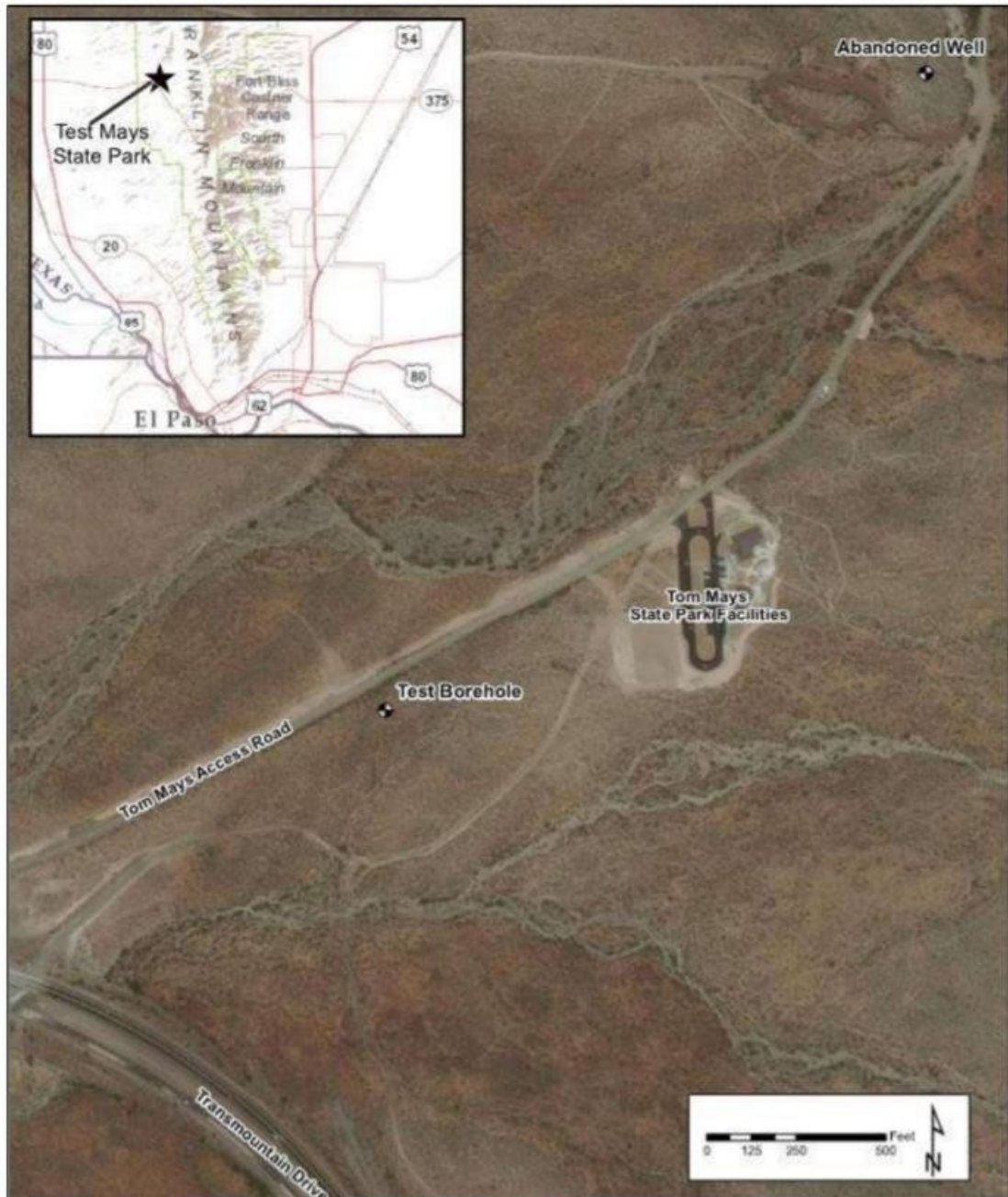
- 1.3.1.10.6. Contractor/engineer shall include the design of a new structure for the wellhead, water booster pump electrical/control equipment, and chlorine feed equipment. The site shall include fencing, access roads, and gates. All structures and fencing shall match the existing architecture of the new on-site visitor center.
- 1.3.1.10.7. Contractor/engineer shall provide a propane gas-powered emergency generator sized for the items associated with the new water plant (water well, booster pumps, etc.). The propane tank shall be initially sized for a run time of 3 days. The exact run time will be based on well pump down/recharge, estimated water used, and power outage duration.
- 1.3.1.10.8. The contractor/engineer shall review the existing emergency generator and transfer switch located at the visitor center fire pump house to determine if these items can be moved to power any of the new equipment.
- 1.3.1.10.9. Contractor/engineer shall install a 20,000 Btu 17 SEER2 Wall-mounted Ductless Mini-Split air conditioner/heat pump system with a programable thermostat or engineer-approved equal as part of the well pump building. The outside unit shall not be visible from the access road, be placed on the back side of the building, and shall include a concrete pad as necessary.
- 1.3.1.10.10. Contractor/engineer shall install ceiling/wall mount electric box heater with an adjustable thermostat.
- 1.3.1.10.11. The new pump building shall have a rain diverter across all openings/windows to direct water away from the entrances/openings and prevent water from directly running on any outside equipment.
- 1.3.1.11. The contractor/engineer shall provide a water well report indicating the elevations of the pump, gravel pack, screen, and bottom of the casing, static water level and pumping level, and results of the pump test. In addition, the contractor/engineer shall provide the results of the chemical and microbiological tests completed after the pump test.
 - 1.3.1.11.1. Contractor/engineer shall design and provide a treatment system as necessary to provide potable drinking water meeting the TCEQ primary drinking water standards and shall include a liquid or tablet chlorine dosing system meeting TCEQ requirements.
 - 1.3.1.11.2. This site will be classified as a transient non-community water system.
- 1.3.1.12. Include the preparation of a Design Basis Report or Technical Memorandum which outlines and discusses all major aspects of the project and design requirements of the project including detailed cost.
 - 1.3.1.12.1. 100% report shall be submitted near the 50% plan submittal and shall direct and guide the project forward. The report shall outline all proposed equipment and manufacturers.

- 1.3.1.12.2. The contractor/engineer shall work closely with TPWD to identify and select the type and manufacturer of all proposed equipment so that support and repair are by local providers. European or long lead time equipment will not be acceptable.
- 1.3.1.13. The contractor/engineer shall include bi-weekly calls to address upcoming and current issues. The call should last approximately 30 minutes and the contractor/engineer shall take and distribute meeting notes and agenda.
- 1.3.1.14. Include site visits, to inspect the site and review the proposed Project Requirements with associated consultants, TPWD personnel, and permitting entities as necessary. Design Professional to create agenda and distribute meeting notes.
- 1.3.1.15. Include one planning workshop to help direct and focus the DBR. The first planning workshop will also function as the review of the 50% DBR. Assume that the meetings will be scheduled as online/Team meetings.
- 1.3.1.16. Include three status/review meetings. One is to occur with 100% DBR submission, the other two shall coincide with a review of the plan comments. Designer to create agenda, take notes, and distribute meeting notes.
- 1.3.1.17. Include one final presentation meeting of the 100% DBR and plans to TPWD staff. Assume that the meetings will be scheduled as online/Team meetings. The contractor/engineer shall create/distribute the agenda and takes notes for this meeting.
- 1.3.1.18. At a minimum, the meetings shall be as follows:
 - 1.3.1.18.1. Kickoff Meeting (Mtg #1)
 - 1.3.1.18.2. 50% - Planning Workshop in conjunction with a review of 50% DBR review (Mtg #2)
 - 1.3.1.18.3. 100% - DBR review (Mtg #3)
 - 1.3.1.18.4. 50% - Plan review (Mtg #4)
 - 1.3.1.18.5. 90% - Plan review (Mtg #5)
 - 1.3.1.18.6. 100% - Unsealed Plan Review (No mtg)
 - 1.3.1.18.7. 100% - Plan/Specification submittal and presentation (Mtg #6)
- 1.3.1.19. The contractor/engineer shall include time, meetings, reports, testing, etc. as necessary to obtain TCEQ approval of the new water well and public water system (PWS). The contractor/engineer shall closely coordinate all meetings and submission of paperwork with TPWD.
- 1.3.1.20. Project Schedule (design and construction), including TPWD review time (15 business days per phase gate deliverable). The design schedule should include time for internal QA/QC and cost estimating to be completed and transmitted with other deliverables. The project schedule should include dates for the transmittal of design review comment responses at the mid-point between receipt of design review comments and the next design deliverable. At the start of the subsequent phase, the Design Professional will be expected to furnish review comment responses within an interval determined by the TPWD Design Manager. The design professional shall lead all meetings, take, and disperse all meeting minutes.

- 1.3.1.21. The contractor/engineer shall work with TPWD to maintain and submit the project schedule monthly or as requested by TPWD to maintain the schedule up to date within eB.
- 1.3.1.22. Required cost estimates for this project to be completed by an experienced professional engineer licensed in the State of Texas familiar with this scope of work. The final cost estimate included with DBR shall be signed and sealed by the engineer.
- 1.3.1.23. The contractor/engineer shall work with TPWD and El Paso Electric as necessary to extend three-phase electric power to the new water well. The new electrical service (if required) shall have a secure configuration.
- 1.3.1.24. All roads and concrete shall meet TxDOT specifications. The minimum strength of all concrete shall be 3,500 psi.
- 1.3.1.25. The selected contractor/engineer will complete and secure all permit applications and approvals. TPWD will work closely with the selected contractor/engineer to complete all paperwork to ensure all data meets TPWD requirements.
- 1.3.1.26. Upon completion of the well the contractor shall disinfect the water well, obtain bacteriological samples, and submit the results to the Owner.
- 1.3.1.27. The water well shall meet all state and local rules governing water well drilling.
- 1.3.1.28. The contractor/engineer shall include two 4-hour days for operation and startup for the training of the site operator. Additionally, the contractor/engineer shall include four (4) two hours blocks of time for on-site instruction/support as necessary during the warranty period.
- 1.3.1.29. The contractor/engineer shall prepare a detailed O&M manual for the well and all components installed. Additionally, as part of the manual, the contractor/engineer shall include information on sampling, testing requirements, and operating a new PWS.
- 1.3.1.30. All meetings, site visits, time blocks, coordination efforts, etc. are a minimum requirement. It shall be up to the contractor/engineer to determine and include all the necessary meetings and coordination necessary to prove a fully functional project/system complete in place.
- 1.3.1.31. During construction, the contractor/engineer shall provide a minimum of (2) site visits for observation including documentation and reports per month. These times shall be coordinated with the contractor and the TPWD Construction Project Manager (CPM) to observe a minimum of 30% of the pipe and equipment installation including bedding and backfill and connections to existing systems. Design Professional to propose the exact number of site visits required. Design professionals should quantify the visits by discipline (Prime and sub-consultants) and by construction milestone. Design Professional to provide actionable field observation report after each site visit within 5 business days of the site visit. TPWD Construction Manager will collaborate with Design Professional to schedule these visits once there is an awarded contract and proposed schedule from the General Contractor.
- 1.3.1.32. Attend the monthly on-site progress meeting. The contractor/engineer shall take notes and coordinate with the Construction Project Manager (CPM) for the agenda and notes.

- 1.3.1.33. Include weekly, approximately 30-minute project meetings for the duration of this phase (exclude the week of the monthly progress meeting) to provide a status update, discuss issues, and address any other items and needs to keep the project moving forward and on schedule. Assume that the meeting will be held via Microsoft Teams. Contractor/engineer to create agenda and distribute meeting notes as needed.
- 1.3.1.34. Upon completion of the work and final acceptance by the Owner, the contractor shall furnish the Owner a one-year workmanship warranty, operations and maintenance (O&M) manual for all equipment and items provided, plus any manufacturer's written warranties.
- 1.3.1.35. This is a general list of the items to include in the scope of work. It shall be up to the contractor/engineer to include all items and costs necessary to provide a fully functional system complete in place.
- 1.3.1.36. See below some general project information on the existing test well completed early 2021 along with some general site information.

- Site Map Approx location of existing test well

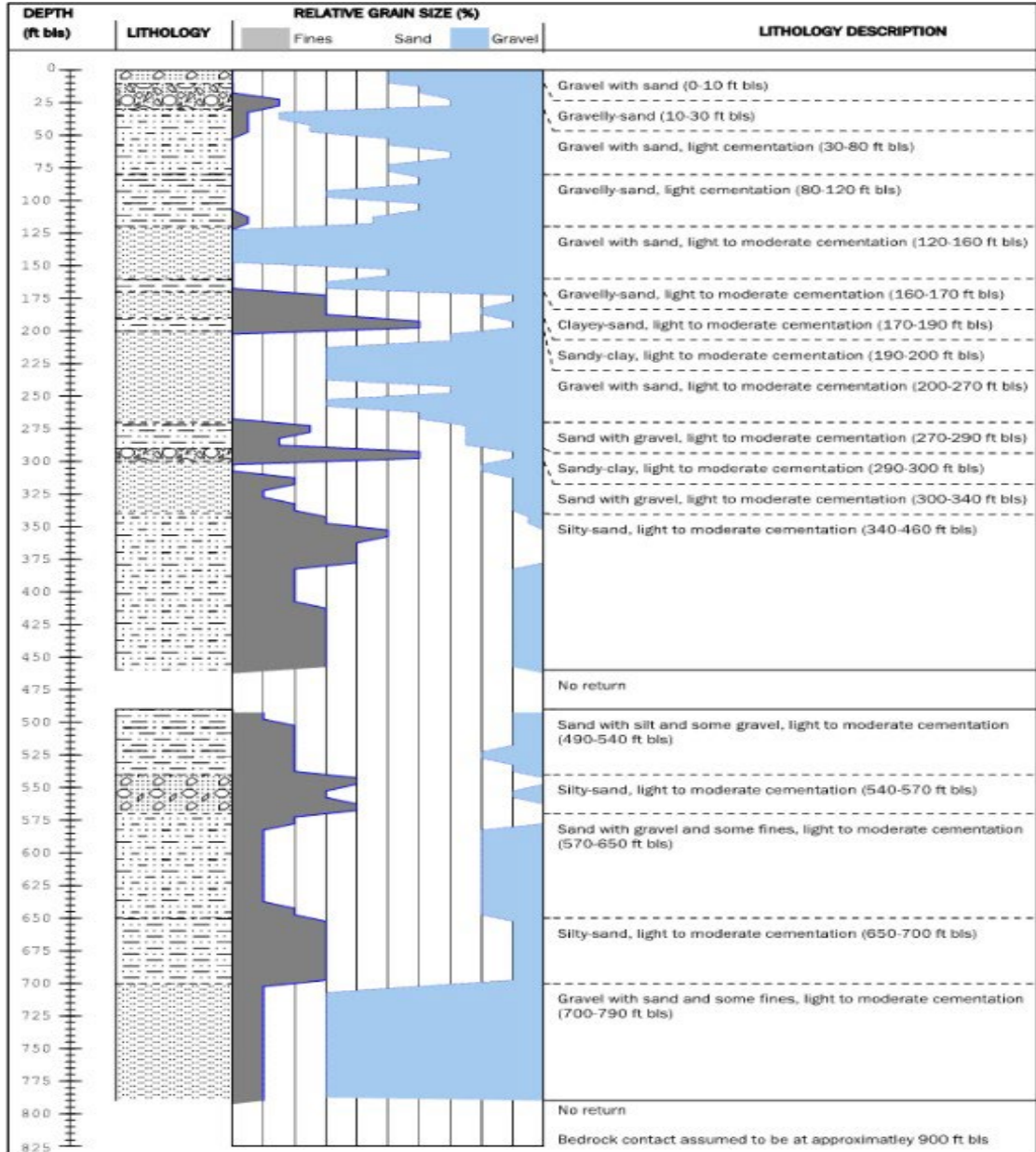


General Lithologic Information

Upper basin-fill range (0 to ~900 feet): This lithologic unit is composed of the following:

- gravel with sand (0 to 10 feet, 30 to 80 feet, 120 to 160 feet, 200 to 270 feet, and 700 to 790 feet),
 - gravelly sand (10 to 30 feet, 80 to 120 feet, and 160 to 170 feet),
 - sandy-clay/clayey-sand (170 to 200 feet, and 290 to 300 feet),
 - sand with gravel (270 to 290 feet, 300 to 340 feet, 570 to 650 feet), and
 - silty sand/sand with silt (340 to 460 feet, 490 to 570 feet, and 650 to 700 feet).
- The deposits appear well graded and minimally to moderately cemented with fine to coarse sand, silt, and clay, with a large percentage of limestone and granite gravel up to 1-inch diameter. The sand and gravel range from angular to sub-rounded. Clay and silt dominant layers in this unit have low plasticity. It is assumed that similar material is present from 790 feet to the estimated bedrock contact (approximately 900 feet). Bedrock - Hueco Limestone (~900 feet to 1,130): Drill cuttings returned from the bottom of the borehole while cleaning out the sluff material consisted of angular fragments of competent cherty limestone which indicates the bedrock contact was encountered above 1,130 feet. However, the exact depth of the bedrock contact was not determined due to the lack of depth-specific drill-cutting recovery. Based on

the shallowest interpreted fractures observed on the caliper log (discussed below), the bedrock contact is assumed to be at approximately 900 feet (3,775 feet amsl).



General Geophysical Well Information

- Geophysical logging was conducted on the test well after the test borehole was drilled to the total depth of 1,130 feet and sluff material was removed. While tripping out the drill string, additional sluff material accumulated limiting the geophysical logging to a depth of 1,057 feet. The borehole was evaluated using electric (spontaneous potential, short-normal and long-normal electrical resistivity, and single-point resistivity), natural gamma, sonic, 3-arm caliper, and magnetic deviation (drift) survey logs. Productive intervals were interpreted from geophysical logs at depths of 890 to 910, 920 to 930, 960 to 980, and 1,020 to 1,040 feet.

• General Caliper Log Information

- Caliper logs depict diameter changes along the length of a borehole. The caliper log is useful in identifying potential formation washouts or fractures in bedrock (enlarged borehole diameter), and areas of formation clay swelling (decreased borehole diameter).
- The caliper log for the test borehole shows the borehole diameter averages approximately 12 inches from 10 to 110 feet indicating a large washout likely due to the collapsing of minimally or non-cemented material collapse. From 110 to approximately 910 feet the borehole diameter averages approximately 8.75 inches with large washouts (12 inches in diameter and larger) from 190 to 200 feet, 310 to 330 feet, 430 to 440 feet, 480 to 490 feet, and 740 to 745 feet. From 900 to 1,050 feet the borehole averages 8.75 inches with fracture zones identified from enlarged borehole diameters at depths of 905 to 920, 940 to 960, 995 to 1,010, and 1,020 to 1,040 feet.

• General Electric Log Information

- Electric logs can provide geologic data relating to lithology, porosity, and permeability. The electric log suite for the test borehole consisted of spontaneous potential, short- and long-normal resistivity, and single-point resistivity. The electric logs begin at the static water level, approximately 860 feet.
- Spontaneous potential log. The spontaneous potential log is useful for making lithology correlations and differentiating permeable from non-permeable strata by plotting changes in electrical potential measured along the length of a borehole. Typically, spontaneous potential (measured in millivolts [mV]) will curve higher when transitioning from a permeable to a non-permeable layer and curve lower when transitioning from a non-permeable to a permeable layer. The magnitude of the spontaneous potential curve is a function of the differences in the chemistry of the drilling fluid and the formation water; the greater the chemical difference between the borehole fluid and formation water, the greater the change in spontaneous potential across layers of different permeabilities. The SP curves lower than baseline at approximately 930, 960, and 1,030 feet which correlate with decreases in natural gamma counts, increases in resistivity and/or sonic travel times, and/or fracture zones identified from the caliper log. These correlations indicate intervals with high water-bearing potential.
- Normal resistivity logs. The short-normal resistivity log measures formation resistivity values near the borehole, while the long-normal log measures average resistivity further into the formation, away from the borehole. High values of resistivity (low electrical conductivity) generally indicate a high volume of coarse-grained material or less fine-grained material. Low values of resistivity (high

electrical conductivity) indicate a lower volume of coarse-grained material or more fine-grained material. Porosity can also be gauged by the difference between short- and long-normal resistivity values. A large difference indicates high porosity, and a small difference indicates low porosity.

- From approximately 860 to 1,010 feet, normal resistivity values were between 200 ohms per meter (ohms/m) and 600 ohms/m with spikes of 1,500, 1,000, and 2,000 ohms/m at 865, 925, and 965 feet, respectively. Resistivity values flat line from approximately 940 to 960 feet and 995 to 1,000 feet due to fractures increasing the size of the borehole past the effective diameter of the logging tool. Additionally, there was a large, consistent difference between the short- and long- normal resistivity values which indicates high porosity in unconsolidated material or fractured material from 860 to 1,010 feet. Normal resistivity values from 1,010 to 1,057 feet rose from approximately 400 to 1,500 ohms/m with a slight decline from approximately 1,025 to 1,030 feet. A consistently large difference between short-normal and long-normal resistivity values from 1,010 to 1,057 feet indicates high porosity or fractured material.

Table 1. Groundwater Sampling Analytical Results			
Analyte (mg/L)	Analytical Method	TCEQ limits (mg/L) ^a	Tom Mays Test Borehole
Total Dissolved Solids (TDS)	SM2540C	1,000*	640
Specific Conductivity (µmhos/cm)	M2510 B	-	1,140
pH @ 25°C (S.U.)	SM4500-H+B	>7.0*	7.2
Total Coliform	Colilert	Neg	Pos
E Coli	Colilert	Neg	Neg
Total Alkalinity as CaCO3	SM2320B	NE	208
Bicarbonate as HCO3	M2320 B	NE	208
Carbonate as CO3	M2320 B	NE	<1
Calcium Hardness as CaCO3	EPA200.7	NE	207
Total Hardness as CaCO3	SM2340B	NE	364
Chloride	EPA300.0	300*	170
Fluoride	EPA300.0	2*	1.78
Nitrate as N	EPA300.0	10	2.22
Nitrite as N	EPA300.0	1	<0.5
Sulfate	EPA300.0	300*	146
Calcium	EPA200.7	NE	82.8
Magnesium	EPA200.7	NE	39
Potassium	EPA200.7	NE	14.2
Sodium	EPA200.7	NE	81.7
Arsenic	EPA200.8	0.01	<0.01
Aluminum	EPA200.7	0.2*	0.087
Copper	EPA200.7	1*	<0.02
Iron	EPA200.7	0.3*	0.24
Lead	EPA200.8	0.01	<0.01
Manganese	EPA200.8	0.05*	0.013
Zinc	EPA200.7	5*	1.27
Field Water Quality Parameters		Method	
Temperature (°C)	YSI 556	-	-
Specific Conductivity - Field (µS/cm)	YSI 556	-	1,082.0
pH - Field (S.U.)	YSI 556	>7.0*	7.6
Turbidity (NTU)	Hach 2100Q	-	21.6
Static Water Level (ft bls)	Meter	-	864.5

Notes:

MCL = Maximum Contaminant Level (Primary Drinking Water Standard), unless otherwise noted.

* Secondary Drinking Water Standard

RED = exceeded the MCL or Secondary MCL

TCEQ = Texas Commission on Environmental Quality

mg/L = milligrams per liter

S.U. = standard units

°C = degrees Celsius

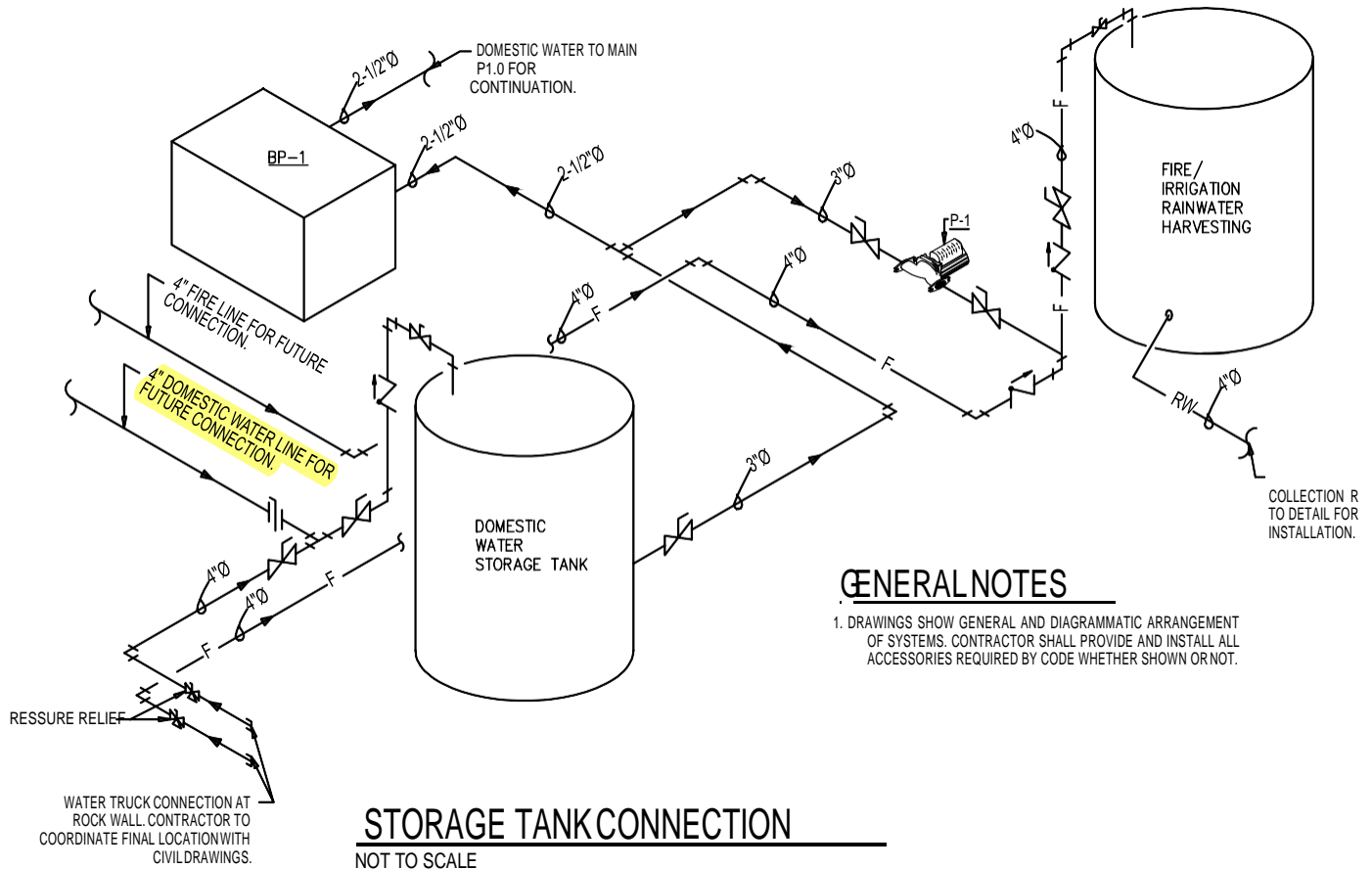
µmhos/cm = microohms per centimeter

µS/cm = micro siemens per centimeter

< = Analyte not detected above the listed laboratory reporting limit

NE = No TCEQ (primary or secondary) standard established

EXISTING POTABLE SYSTEM



DOMESTIC WATER PUMP SCHEDULE										
TAG	MODEL NUMBER	SERVICE	MANUF.	FLUID TYPE	FLOW RATE (gpm)	HEAD (ft)	MOTOR POWER (Hp)	ELECTRICAL REQUIR. V/Hz/Ph.	SUCT/DISCH CONNECTIONS (in.)	NOTES
P-1	91122116 / TP80- 160/2	STORAGE TANK	GRUNDFOS	WATER	150	25	3	115/60/1	3	1, 2
NOTES: 1. PROVIDE OVERLOAD PROTECTION. 2. CONSTRUCTION SHALL BE SUITABLE FOR DOMESTIC WATER. 3. PROVIDE WITH SAFE-T-COVER HEATED ENCLOSURE AND 1000 WATTE ELECTRIC HEAT.										

DOMESTIC BOOSTER PUMP SYSTEM													
TAG	SYSTEM							MOTOR					
	SERVICE	LOCATION	FLUID FLOW (gpm)	SYSTEM PRESSURE (psi)	HEAD (ft)	NPSH (ft)	MODEL	RATED POWER (hp)	MOTOR EFF. (%)	ENCLOSURE CLASS	VOLTS Phase	MCA (Amps)	WEIGHT (lbs)
BP-1	DOMESTIC WATER SUPPLY	HOUSING ENCLOSURE	55	65	160	6.24	HYDRO MPC E 2 CRE 3-9	2	79.5	IP55	208/1	17.8	324
NOTES: 1. PREPACKAGED CANARIIS IRRIGATION BOOSTER PUMP HOUSE ENCLOSURE SIZE 120"x84"x100.5" 2. INCLUDE WESSELS COMPANY HYDRO-PNEUMATIC TANK FXA-130 (35-GALLON) 3. INCLUDE IRRIGATION BOOSTER PUMP													

EXHIBIT E

Uniform General Conditions
for
State of Texas Construction
Contracts

Including

Supplementary General
Conditions for
Projects Administered by the
Texas Parks and Wildlife
Department



EXHIBIT E

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Article 1. Definitions

Unless the context clearly requires another meaning, the following terms have the meaning assigned herein.

- 1.1 *Addendum/Addenda* means formally issued written or graphic modifications and/or interpretations of the Construction Documents that may add to, delete from, clarify or correct the description and/or scope of the Work. Addenda are issued during the bidding phase of the project.
- 1.2 *Application for Payment* means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.
- 1.3 *Application for Final Payment* means Contractor's final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor's retainage.
- 1.4 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Ch. 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Ch. 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Ch. 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.5 ***As-Built Drawings and Specifications* means the drawing set, specifications and other materials prepared by the Contractor, in the field, that documents the changes made by the contractor. Collectively, these are also called "red-lines" or "as-builts."**
- 1.6 *Authority Having Jurisdiction* means a federal, state, local, or other regional department, or an individual such as a fire marshal, building official, electrical inspector, utility provider or other individual having statutory authority.
- 1.7 *Baseline Schedule* means the initial time schedule prepared by Contractor for Owner's information and acceptance that conveys Contractor's and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.

- 1.8 *Certificate of Final Completion* means the certificate issued by **TPWD that includes certification** by **the** A/E that documents, to the best of A/E's knowledge and understanding, Contractor's completion of all Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of ~~Record~~ **As-Built** Documents, operations and maintenance manuals, and all other closeout documents required by the Contract Documents. **Additional documentation may be required by TPWD for consideration of the Contractor's Application for Final Payment.**
- 1.9 *Certificate of Substantial Completion* means the certificate executed by the A/E, ODR and Contractor that documents to the best of A/E's and ODR's knowledge and understanding, Contractor's sufficient completion of the work in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.10 *Change Order* means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor, and A/E.
- 1.11 *Close-out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, ~~record~~ **As-Built** documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.12 *Contract* means the entire agreement between Owner and Contractor, including all of the Contract Documents.
- 1.13 *Contract Date* is the date when the agreement between Owner and Contractor becomes effective.
- 1.14 *Contract Documents* mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; General, Supplementary General, and Special Conditions; and all pre-bid and/or pre-proposal addenda.
- 1.15 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.16 *Contract Time* means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.
- 1.17 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.
- 1.18 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.

- 1.19 *Construction Manager-at-Risk*, in accordance with Tex. Gov't Code, Ch. 2166, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.
- 1.20 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.21 *Day* means a calendar day unless otherwise specifically stipulated.
- 1.22 *Design-Build* means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder. The Design-Build Project delivery shall be implemented in accordance with Tex. Gov't Code § 2166.2531.
- 1.23 *Drawings* mean that product of A/E which graphically depicts the Work.
- 1.24 *Final Completion* means the date determined and certified by A/E and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.25 *Final Payment* means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor's retainage.
- 1.26 *Historically Underutilized Business (HUB)* pursuant to Tex. Gov't Code, Ch. 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.
- 1.27 *Notice to Proceed (NTP)* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 1.28 *Open Item List* means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.
- 1.29 *Owner* means the State of Texas, and any agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as Owner. **Owner herein shall mean the Texas Parks and Wildlife Department.**
- 1.30 *Owner's Designated Representative (ODR)* means the individual assigned by Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. ODR is the only party authorized to direct changes to the scope, cost, or

- time of the Contract.
- 1.31 *Project* means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations.
- 1.32 *Progress Assessment Report (PAR)* means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 1.33 *Proposed Change Order (PCO)* means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's response of pricing for the proposed change.
- 1.34 *Punchlist* means a list of **minor** items of Work to be completed or corrected by Contractor after Substantial Completion. Punchlists indicate **minor** items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.35 *Record Documents* mean the drawing set, Specifications, and other materials ~~maintained~~ **produced by the A/E of Record Contractor** that documents all addenda, Architect's Supplemental Instructions, Change Orders, and postings and markings that record the as-constructed conditions of the Work and all changes made during construction. **The Record Documents are produced using the As-Built Drawings and Specifications as provided by the Contractor, and any As-Built documents produced by the A/E of Record during the course of the construction.**
- 1.36 *Request for Information (RFI)* means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.
- 1.37 *Samples* mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.38 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and A/E.
- 1.39 *Shop Drawings* mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.
- 1.40 *Site* means the geographical area of the location of the Work.
- 1.41 *Special Conditions* mean the documents containing terms and conditions which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions and Supplementary General Conditions.

- 1.42 *Specifications* mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.43 *Subcontractor* means a business entity that enters into an agreement with Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work.
- 1.44 *Submittal Register* means a list provided by Contractor of all items to be furnished for review and approval by A/E and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.45 *Substantial Completion* means the date determined and certified by Contractor, A/E, and Owner when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.46 *Supplementary General Conditions* mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions. ***Texas Parks and Wildlife Department has adopted Uniform Supplementary General Conditions that apply to all TPWD construction projects. TPWD Uniform Supplementary General Conditions are indicated by the bold and italicized typeface shown here.***
- 1.47 *Unit Price Work* means the Work, or a portion of the Work, paid for based on incremental units of measurement.
- 1.48 *Unilateral Change Order (ULCO)* means a Change Order issued by Owner without the complete agreement of Contractor, as to cost and/or time.
- 1.49 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for Contractor, and/or its agents, to fulfill Contractor's obligations under the Contract.
- 1.50 *Work Progress Schedule* means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

Article 2. Wage Rates and Other Laws Governing Construction

- 2.1 Environmental Regulations. Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, Owner is responsible for obtaining and maintaining permits related to stormwater run-off. Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.
- 2.2 Wage Rates. Contractor shall not pay less than the wage scale of the various classes of labor as shown on the prevailing wage schedule provided by Owner in the bid or proposal specifications. The specified wage rates are minimum rates only. Owner is not bound to pay any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The prevailing wage schedule is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates.
- 2.2.1 Notification to Workers. Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Project Site When requested by Owner, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.
- 2.2.1.1 Pursuant to Tex. Gov't Code § 2258.024, Contractor shall keep, on site, true and accurate records showing the name and occupation of each worker employed by the Contractor or subcontractors and the actual per diem wages paid to each worker. The record shall be open to inspection by the ODR and their agents at all reasonable hours for the duration of the contract.
- 2.2.1.2 With each application for progress payment, Contractor shall make available upon request certified payroll records, including from subcontractors of any tier level, on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format, along with copies of any and all Contract Documents between Contractor and any Subcontractors. Pursuant to Tex. Penal Code §§ 37.02 and 37.10, Employees of Contractor and subcontractors, including all tier levels, shall be subject to prosecution for submitting certified payroll records that contain materially false information.
- 2.2.1.3 The prevailing wage schedule is determined by Owner in compliance

with Tex. Gov't Code, Ch. 2258. Should Contractor at any time become aware that a particular skill or trade not reflected on Owner's prevailing wage schedule will be or is being employed in the Work, whether by Contractor or by Subcontractor, Contractor shall promptly inform ODR of the proposed wage to be paid for the skill along with a justification for same and ODR shall promptly concur with or reject the proposed wage and classification.

2.2.1.4 Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the prevailing wage schedule. In no case, shall any worker be paid less than the wage indicated for laborers.

2.2.1.5 Pursuant to Tex. Labor Code § 214.008, Misclassification of Workers; Penalty. The Owner requires Contractor and all subcontractors properly classify individuals as Employees or Independent Contractors.

2.2.2 Penalty for Violation. Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars (\$60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule

2.2.3 Complaints of Violations.

2.2.3.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov't Code, Ch. 2258 and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties in accordance with Tex. Gov't Code § 2258.023, such amounts being subtracted from successive progress payments pending a final decision on the violation.

2.2.3.2 No Extension of Time. If Owner's determination proves valid that good cause existed to believe a violation had occurred, Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures.

2.2.3.3 Cooperation with Owner's Investigation. Contractor shall cooperate with Owner during any investigations hereunder. Such cooperation shall include, but not necessarily be limited to, timely providing the information and/or documentation requested by Owner, which may include certified payroll records on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format; and copies of any and

all Contract Documents between Contractor and any Subcontractors.

2.2.3.4 Notification to Owner. In the event Contractor or Subcontractor elect to appeal an initial determination made pursuant to Paragraph 2.2.3.1, the Contractor and/or Subcontractor, as applicable, shall deliver notice thereof to Owner.

2.3 Venue for Suits. The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Travis County, Texas, or as may otherwise be designated in the Supplementary General Conditions.

2.4 Licensing of Trades. Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.

2.5 Royalties, Patents, and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.

2.6 State Sales and Use Taxes. Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Ch. 151. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.

Article 3. General Responsibilities of Owner and Contractor

- 3.1 Owner's General Responsibilities. Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.
- 3.1.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed with construction, a conference will be convened for attendance by Owner, Contractor, A/E and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the Project team members.
- 3.1.2 Owner's Designated Representative. Prior to the start of construction, Owner will identify Owner's Designated Representative (ODR), who has the express authority to act and bind Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.
- 3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract Documents, ODR is the single point of contact between Owner and Contractor. Notice to ODR, unless otherwise noted, constitutes notice to Owner under the Contract.
- 3.1.2.2 All directives on behalf of Owner will be conveyed to Contractor and A/E by ODR in writing.
- 3.1.2.3 Owner will furnish or cause to be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Supplementary General Conditions or Special Conditions.
- 3.1.2.4 The ODR will establish the protocol for planning, scheduling and documenting progress meetings with provisions for absence of various project team members that have a key role in these duties.
- 3.1.3 Owner Supplied Materials and Information.
- 3.1.3.1 Owner will furnish to Contractor those surveys describing the physical characteristics, legal description, limitations of the Site, Site utility locations, and other information used in the preparation of the Contract Documents.
- 3.1.3.2 Owner will provide information, equipment, or services under

Owner's control to Contractor with reasonable promptness.

3.1.4 Availability of Lands. Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by Contractor. Contractor shall comply with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities.

3.1.5 Limitation on Owner's Duties.

3.1.5.1 Owner will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Except as provided in Section 2.5, Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.

3.1.5.2 Owner will not take any action in contravention of a design decision made by A/E in preparation of the Contract Documents, when such actions are in conflict with statutes under which A/E is licensed for the protection of the public health and safety.

3.2 Role of Architect/Engineer. Unless specified otherwise in the Contract between Owner and Contractor, A/E shall provide general administration services for Owner during the construction phase of the project. Written correspondence, requests for information, and Shop Drawings/submittals shall be directed to A/E for action. A/E has the authority to act on behalf of Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to Contractor by ODR, upon request.

3.2.1 Site Visits.

3.2.1.1 A/E will make visits to the Site at intervals as provided in the A/E's Contract with Owner, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to Owner.

3.2.1.2 A/E has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Paragraph 3.1.5.2, Owner retains the sole authority to accept or reject Work and issue direction for correction,

removal, or replacement of Work.

- 3.2.2 Clarifications and Interpretations. It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by ODR, such clarifications or interpretations will be provided by A/E consistent with the intent of the Contract Documents. A/E will issue these clarifications with reasonable promptness to Contractor as A/E's supplemental instruction ("ASI") or similar instrument. If Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Contractor shall so notify Owner in accordance with the provisions of Article 11.
- 3.2.3 Limitations on Architect/Engineer Authority. A/E is not responsible for:
- 3.2.3.1 Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Project, nor will A/E supervise, direct, control or have authority over the same;
 - 3.2.3.2 The failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work;
 - 3.2.3.3 Contractor's failure to perform or furnish the Work in accordance with the Contract Documents; or
 - 3.2.3.4 Acts or omissions of Contractor, or of any other person or organization performing or furnishing any of the Work.
- 3.3 Contractor's General Responsibilities. Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination, procedures and protection of the installed work as part of the contract until substantial completion of the project. Contractor remains responsible for the care and protection of materials and Work in the areas where punch list items are completed until Final Completion.
- 3.3.1 Project Administration. Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of A/E and ODR in accordance with these general conditions and other provisions of the Contract, and as outlined in the preconstruction conference. Contractor's Project Administration includes periodic daily reporting on weather, work progress, labor, materials, equipment, obstructions to prosecution of the work, accidents and injuries in accordance with the Contract and transmitted no less frequently than on a weekly basis.
- 3.3.2 Contractor's Management Personnel. Contractor shall employ a competent person or persons who will be present at the Project Site during the progress

of the Work to supervise or oversee the work. The competent persons are subject to the approval of ODR ***through the submittal process stated in Owner's Special Conditions***. Contractor shall not change approved staff during the course of the project without the written approval of ODR unless the staff member leaves the employment of Contractor. Contractor shall provide additional quality control, safety and other staff as stated in the Supplementary General Conditions.

- 3.3.3 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.
- 3.3.4 Services, Materials, and Equipment. Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.
- 3.3.5 Contractor General Responsibility. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss. Owner shall deliver to Contractor a complete list and respective values of such materials or equipment and make an equitable adjustment to the contract amount for any increase in cost of Builder's Risk insurance.
- 3.3.6 Non-Compliant Work. Should A/E and/or ODR identify Work as non-compliant with the Contract Documents, A/E and/or ODR shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to the Owner. The approval of Work by either A/E or ODR does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3.3.7 Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner. Pursuant to Tex. Gov't Code § 2269.256(b), if the Contractor reviews, evaluates and recommends that the Owner accept a bid or proposal from a Subcontractor but the Owner requires another bid or proposal to be accepted, Owner shall compensate the Contractor by a change in price, time or guaranteed maximum cost for any additional cost or risk the Contractor will incur because of Owner's requirement to select another bid or proposal rather than the one recommended.

- 3.3.7.1 All Subcontracts and supply contracts shall be consistent with and bind the Subcontractors and suppliers to the terms and conditions of the Contract Documents including provisions of the Contract between Contractor and Owner.
- 3.3.7.2 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through Contractor. Contractor shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Contractor agrees that Owner has no obligation to review or approve the content of such contracts and that providing Owner such copies in no way relieves Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Contractor in the same manner in which Contractor is bound to Owner.
- 3.3.8 Continuing the Work. Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements, or alternative resolution processes with Owner. Contractor shall not delay or postpone any Work because of pending unresolved disputes, disagreements or alternative resolution processes, except as Owner and Contractor may agree in writing.
- 3.3.9 Cleaning. Contractor shall at all times, keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion inspection and, again, upon completion of the Project prior to the final inspection.
- 3.3.10 Acts and Omissions of Contractor, its Subcontractors, and Employees. Contractor shall be responsible for acts and omissions of his employees and all its Subcontractors, their agents and employees. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees whom ODR finds to be careless, incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable.
- 3.3.11 Acts or Omissions. Contractor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of Contractor or its agents, employees, subcontractors, Order

Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3.3.12 Infringements.

3.3.12.1 Contractor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

3.3.12.2 Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by Contractor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

3.3.12.3 If Contractor becomes aware of an actual or potential claim, or Customer provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against Customer, shall), at Contractor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product

or service so that Customer's use is non-infringing.

3.3.12.4 Taxes/Workers' Compensation/Unemployment Insurance-Including Indemnity.

3.3.12.4.1 CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

3.3.12.4.1 CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS OWNER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT

AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 3.3.12.5 The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 3.3.12.6 Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor which involves Owner and known to Contractor and related to or arising out of Contractor's activities under this Contract.
- 3.3.13 Ancillary Areas. Operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:
- 3.3.13.1 Confine all Contractor operations, including storage of materials and employee parking upon the Site of Work, to areas designated by Owner.
- 3.3.13.2 Contractor may erect, at its own expense, temporary buildings that will remain its property. Remove such buildings and associated utility service lines upon completion of the Work, unless Contractor requests and Owner provides written consent that it may abandon such buildings and utilities in place.
- 3.3.13.3 Use only established roadways or construct and use such temporary roadways as may be authorized by Owner. Do not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of Contractor.
- 3.3.13.4 Owner may restrict Contractor's entry to the Site to specifically assigned entrances and routes.
- 3.3.14 Separate Contracts. Owner reserves the right to award other contracts in connection with other portions of the Project under these same or substantially similar contract conditions, including those portions related to insurance and waiver of subrogation. Owner reserves the right to perform operations related to the Project with Owner's own forces.
- 3.3.15 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by change order.

- 3.3.16 Contractor shall cooperate with other contractors or forces employed on the Project by Owner, including providing access to Site and Project information as requested.

- 3.3.17 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities, or defective construction by Contractor. Owner will equitably adjust the Contract by Change Order for costs incurred by Contractor because of delays, improperly timed activities, damage to the Work or defective construction by a separate contractor.

Article 4. Historically Underutilized Business (HUB) Subcontracting Plan

- ~~4.1~~ General Description. The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Ch. 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. § 20.13(b).
- 4.1.1 State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. 34 T.A.C. § 20.13(b) outlines the State's policy to encourage the utilization of HUBs in State contracting opportunities through race, ethnic and gender neutral means.
- 4.1.2 A Contractor who contracts with the State in an amount of \$100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. § 20.14(a)(2)(A) by submitting a HUB subcontracting plan within twenty-four (24) hours after the bid or response is due and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Contract. ***Unless stated otherwise in the contract documents, the HUB subcontracting plan shall be submitted with the bid or response on or before the specified due date and time for the bid or response.***
- ~~4.2~~ Compliance with Approved HUB Subcontracting Plan. Contractor, having been awarded this Contract in part by complying with the HUB program statute and rules, hereby covenants to continue to comply with the HUB program as follows:
- 4.2.1 Prior to adding or substituting a Subcontractor, promptly notify Owner in the event a change is required for any reason to the accepted HUB subcontracting plan.
- 4.2.2 Conduct the good-faith effort activities required and provide Owner with necessary documentation to justify approval of a change to the approved HUB subcontracting plan.
- 4.2.3 Cooperate in the execution of a Change Order or such other approval of the change in the HUB subcontracting plans as Contractor and Owner may agree to.
- 4.2.4 Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB subcontracting plan.
- 4.2.5 Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by Owner that demonstrates Contractor's performance of the HUB subcontracting plan. ***TPWD requires submission of a copy of the compliance report with the Application for Payment for work performed.***

4.2.5.1 Progress Assessment Report (PAR): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, including the use/expenditures they have made to Subcontractors. The PAR is available at in the Index Forms Library on the Facilities Design & Construction page of the Texas Facilities Commission website.
(<http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>). **Contractor shall submit a PAR to TPWD HUB Administration no later than the 5th day of the month. Contractor shall submit a copy of the current month's PAR with the Application for Payment.**

4.2.6 Promptly and accurately explain and provide supplemental information to Owner to assist in Owner's investigation of Contractor's good-faith effort to fulfill the HUB subcontracting plan and the requirements under 34 T.A.C. § 20.14(a)(1).

~~4.3~~ Failure to Demonstrate Good-Faith Effort. Upon a determination by Owner that Contractor has failed to demonstrate a good-faith effort to fulfill the HUB subcontracting plan or any Contract covenant detailed above, Owner may, in addition to all other remedies available to it, report the failure to perform to the Comptroller of Public Accounts, Texas Procurement and Support Services Division, Historically Underutilized Business Program and may bar Contractor from future contracting opportunities with Owner.

Article 5. Bonds and Insurance

- 5.1 Construction Bonds. Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Ch. 2253. On Construction Manager-at-Risk and Design-Build Projects the Owner shall require a security bond, as described in Subsection 5.1.2 below.
- 5.1.1 Bond Requirements. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to Owner, on Owner's form, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than ten (10) percent of the surety's capital and surplus, Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to Owner.
- 5.1.1.1 A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of Owner. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through Contractor's warranty period.
- 5.1.1.2 A Payment bond is required if the Contract price is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. The form of the bond shall be approved by the Office of the Attorney General of Texas.
- 5.1.2 Security Bond. The security bond provides protection to Owner if Contractor presents an acceptable guaranteed maximum price ("GMP") to Owner and 1) fails to execute the GMP; or 2) fails to deliver the required payment and performance bonds within the time period stated below.
- 5.1.3 When Bonds Are Due.
- 5.1.3.1 Security bonds are due within ten (10) days of signing a Construction Manager-at-Risk or Design-Build Contract, ***unless stated otherwise in the contract documents.***
- 5.1.3.2 Payment and performance bonds are due within ten (10) days of Contractor's receipt of a fully executed GMP on a Construction Manager-at-Risk project or the Contract Sum for a Design-Build project, or within ten (10) days of Contractor's receipt of a fully executed Contract on competitively bid or competitive sealed

proposal projects.

- 5.1.4 Power of Attorney. Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 5.1.5 Bond Indemnification. The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Tex. Gov't Code, Ch. 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.
- 5.1.6 Furnishing Bond Information. Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.
- 5.1.7 Claims on Payment Bonds. Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his surety. Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.
- 5.1.8 Payment Claims when Payment Bond not Required. The rights of Subcontractors regarding payment are governed by Tex. Prop. Code §§ 53.231 – 53.239 when the value of the Contract between Owner and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.
- 5.1.9 Sureties. A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).
- 5.2 Insurance Requirements. Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment.

Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.

- 5.2.1 Contractor shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Supplementary General Conditions or Special Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 14.
- 5.2.2 Contractor shall deliver to Owner true and complete copies of certificates and corresponding policy endorsements prior to the issuance of any Notice to Proceed.
- 5.2.3 Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- 5.2.4 The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- 5.2.5 The insurance coverage and limits established herein shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.
- 5.2.6 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.

5.2.2.1 Insurance Coverage Required.

5.2.2.1.1 Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation in favor of Owner, employer's liability insurance of not less than:

\$1,000,000 each accident;

\$1,000,000 disease each employee; and

\$1,000,000 disease policy limit.

5.2.2.1.2 Commercial General Liability Insurance. Including premises, operations, independent contractor's liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's liability for bodily injury

(including death) and property damage with a minimum limit of:

\$1,000,000 per occurrence;

\$2,000,000 general aggregate;

\$5,000 Medical Expense each person;

\$1,000,000 Personal Injury and Advertising Liability;

\$2,000,000 products and completed operations aggregate;

\$50,000 Damage to Premises Rented to You; and

Coverage shall be on an “occurrence” basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.

If the Work involves any activities within fifty (50) feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

- 5.2.2.1.3 Asbestos Abatement Liability Insurance, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. *This requirement applies if the Work or the Project includes asbestos containing materials.

The combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.

*Specific requirement for claims-made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

Employer’s liability limits for asbestos abatement will be:

\$500,000 each accident;

\$500,000 disease each employee; and

\$500,000 disease policy limit.

If this Contract is for asbestos abatement only, the Special Form builder's risk or Special Form installation floater (e) is not required.

- 5.2.2.1.4 Comprehensive Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000 per accident. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

- 5.2.2.1.5 Special Form Builder's Risk Insurance, if applicable (or Special Form installation floater for instances in which the project involves solely the installation of material and/or equipment). Coverage shall be Special Form, including, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement and named storm. Builder's risk and installation floater limits shall be equal to 100 percent of the Contract Sum plus, if any, existing property and Owner-furnished equipment specified by Owner. The policy shall be written jointly in the names of Owner and Contractor. Subcontractors shall be named as additional insureds. The policy shall have endorsements as follows:

5.2.2.1.5.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

5.2.2.1.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion.

5.2.2.1.5.3 Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.

5.2.2.1.5.4 For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Supplementary General and Special Conditions for possible additional builder's risk insurance requirements.

5.2.2.1.5.5 For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.

5.2.2.1.5.6 For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.

5.2.2.1.5.7 For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.

5.2.2.1.5.8 Builder's risk insurance policy shall remain in effect until Substantial Completion.

5.2.2.1.6 "Umbrella" Liability Insurance. Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than amount specified in the Supplementary General Conditions or Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

5.2.3 Policies must include the following clauses, as applicable:

5.2.3.1 This insurance shall not be canceled, materially changed, or non-renewed except after thirty (30) days written notice has been given to Owner.

5.2.3.2 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by Owner for liability arising out of operations under the Contract with Owner.

5.2.3.3 Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under Contract with Owner. The additional insured status must cover

completed operations as well. This is not applicable to workers' compensation policies.

- 5.2.3.4 A waiver of subrogation in favor of Owner shall be provided in all policies.

- 5.2.4 Without limiting any of the other obligations or liabilities of Contractor, Contractor shall require each Subcontractor performing work under the Contract, at Subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Contractor's certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Contractor agrees to provide workers' compensation for Subcontractors and their employees. Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. Contractor must retain the certificates of insurance for the duration of the Contract plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

- 5.2.5 Workers' compensation insurance coverage must be provided for all workers at all tier levels and meet the statutory requirements of Tex. Lab. Code § 401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.

Article 6. Construction Documents, Coordination Documents, and Record Documents

6.1 Drawings and Specifications.

- 6.1.1 Copies Furnished. Contractor will be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and Addenda as provided in the Supplementary General Conditions or Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the entity requesting such additional sets. Electronic copies of such documents will be provided to Contractor without charge. ***Unless otherwise called for in the Special Conditions, four (4) sets of drawings and specifications will be furnished to the Contractor free of charge upon justification of need.***
- 6.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by A/E are to remain A/E's property ***unless the Owner and A/E agree otherwise.*** These documents are not to be used on any other project, and with the exception of the Contract record set and electronic versions needed for warranty operations, are to be returned to the A/E, upon request, following completion of the Work.
- 6.1.3 Interrelation of Documents. The Contract Documents as referenced in the Contract between Owner and Contractor are complimentary, and what is required by one shall be as binding as if required by all.
- 6.1.4 Resolution of Conflicts in Documents. Where conflicts may exist within the Contract Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Contract; (c) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials and workmanship); and (e) other Contract Documents. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control and more specific requirements shall govern over general requirements. Contractor shall notify A/E and ODR for resolution of the issue prior to executing the Work in question.
- 6.1.5 Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, Contractor shall examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.

6.1.6 Discrepancies and Omissions in Drawings and Specifications.

- 6.1.6.1 Promptly report to ODR and to A/E the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work. ***The Owner does not warrant or make any representations as to the accuracy or completeness of the information furnished to the Contractor by the Owner***
- 6.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.
- 6.1.6.3 It is further recognized that Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk.
- 6.1.6.4 When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.
- 6.1.6.5 When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with A/E for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.
- 6.1.6.6 Contractor has no liability for errors, omissions, or inconsistencies unless Contractor knowingly failed to report a recognized problem to Owner or the Work is executed under a Design-Build or Construction Manager-at-Risk Contract as outlined above. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.

6.2 Requirements for Record Documents. Contractor shall:

- 6.2.1 Maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, and all Project correspondence. Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. Provide Owner and A/E access to these documents.

- 6.2.2 Maintain the ~~Record Documents~~ **As-Builts** including Drawings, Specifications and other materials which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available all records prescribed herein for reference and examination by Owner and its representatives and agents.
- 6.2.3 Update the ~~Record Documents~~ **As-Builts** at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.
- 6.2.4 Prior to requesting Substantial Completion inspection Contractor shall furnish a copy of its marked-up ~~Record Documents~~ **As-Builts** and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents. (Unexecuted samples of the aforementioned documentation may be reviewed by ODR when the absence of substantial completion transactions preclude execution; however, Contractor remains obligated to provide fully executed copies of such materials prior to final payment.)
- 6.2.5 Once determined acceptable by ODR with input from A/E, provide one (1) reproducible copy and one (1) electronic media copy of all Record ~~Documents~~ **As-Built documents** unless otherwise required by the Supplementary General Conditions or Special Conditions.
- 6.2.6 Contractor shall be responsible for updating the ~~Record~~ **As-Built** Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs.
- 6.2.7 A/E shall be responsible for updating the ~~Record~~ **As-Built** Documents ~~for~~ **with** any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or Owner. **A/E shall be responsible for compiling all As-Built documentation (as produced both by the Contractor and by the A/E) into the Record Documents.**

Article 7. Construction Safety

- 7.1 General. It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law No. 91- 596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to ODR and A/E prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.
- 7.2 Notices. Contractor shall provide notices as follows:
- 7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
- 7.2.2 Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.
- 7.3 Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
- 7.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
- 7.3.2 Give ODR and A/E prompt notice of all such events.
- 7.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify Owner within seventy-two (72) hours of the emergency response event.
- 7.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due Contractor.

- 7.4 Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify ODR and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.
- 7.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.
- 7.4.2 Supply ODR and A/E with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide ODR with written notification within one week of such catastrophic event if legal counsel delays submission of full report.
- 7.5 Environmental Safety. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify ODR immediately.
- 7.5.1 Bind all Subcontractors to the same duty.
- 7.5.2 Upon receiving such notice, ODR will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, ODR will issue a written report to Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
- 7.5.3 Owner may hire third-party Contractors to perform any or all such steps.
- 7.5.4 Should compliance with ODR's instructions result in an increase in Contractor's cost of performance, or delay the Work, Owner will make an equitable adjustment to the Contract Sum and/or the time of completion, and modify the Contract in writing accordingly.
- 7.6 Trenching Plan. When the project requires excavation which either exceeds a depth of four (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan to ODR prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.

Article 8. Quality Control

- 8.1 Materials & Workmanship. Contractor shall execute Work in a good and workmanlike matter in accordance with the Contract Documents. Contractor shall develop and provide a quality control plan specific to this Project and acceptable to Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.
- 8.2 Testing.
- 8.2.1 Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents. Contractor shall provide the following testing:
- 8.2.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.
- 8.2.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.
- 8.2.1.3 Preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.
- 8.2.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.
- 8.2.2 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to ODR, A/E, and Contractor.
- 8.2.3 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:
- 8.2.3.1 Contractor selection and submission of the laboratory for Owner acceptance.
- 8.2.3.2 Acceptance by Owner of the quality and nature of tests.
- 8.2.3.3 All tests taken in the presence of A/E and/or ODR, or their representatives.

- 8.2.3.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.
- 8.2.3.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
- 8.2.3.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which ODR determines appropriate, including complete removal and replacement of non-compliant work or material.
- 8.2.4 Notice of Testing. Contractor shall give ODR and A/E timely notice of its readiness and the date arranged so ODR and A/E may observe such inspection, testing, or approval. **Contractor shall give Owner a minimum of five (5) working days advance notice prior to testing.**
- 8.2.5 Test Samples. Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay.
- 8.2.6 Covering Up Work. If Contractor covers up any Work without providing Owner an opportunity to inspect, Contractor shall, if requested by ODR, uncover and recover the work at Contractor's expense.

8.3 Submittals.

- 8.3.1 Contractor's Submittals. Contractor shall submit with reasonable promptness consistent with the Project schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, Contractor shall review each submittal for general compliance with Contract Documents and approve submittals for review by A/E and Owner by an approval stamp affixed to each copy. Submittal data presented without Contractor's stamp will be returned without review or comment, and any delay resulting from failure is Contractor's responsibility.
 - 8.3.1.1 Contractor shall within twenty-one (21) days of the effective date of the Notice To Proceed with construction, submit to ODR and A/E, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by A/E and Owner. The list shall include Shop Drawings, manufacturer's literature, certificates of compliance, materials Samples, materials colors, guarantees, and all other items identified throughout the Specifications.
 - 8.3.1.2 Contractor shall indicate the type of item, Contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from A/E and

Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. Contractor's Submittal Register must be reasonable in terms of the review time for complex submittals. Contractor's submittal schedule must be consistent with the Work Progress Schedule and identify critical submittals. Show and allow a minimum of fifteen (15) calendar days duration after receipt by A/E and ODR for review and approval. If resubmittal required, allow a minimum of an additional fifteen (15) calendar days for review. Submit the updated Submittal Register with each request for progress payment. Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. If Contractor fails to update and provide the Submittal Register as required, Owner may, after seven (7) days notice to Contractor withhold a reasonable sum of money that would otherwise be due Contractor.

8.3.1.3 Contractor shall coordinate the Submittal Register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to ODR the updated Submittal Register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the Submittal Register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.

8.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data to the extent possible from existing conditions and design information provided by A/E prior to fabrication; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.

8.3.2 Review of Submittals. A/E and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs A/E and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains Owner's

written specific approval of the particular deviation.

- 8.3.3 Correction and Resubmission. Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to A/E and ODR, when applicable, to any new revisions other than the corrections requested on previous submissions.
- 8.3.4 Limits on Shop Drawing Review. Contractor shall not commence any Work requiring a submittal until review of the submittal **is fully executed** under Subsection 8.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 8.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and ODR's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action. A/E or ODR shall not make formal changes to the Contract Documents via the submittal process. Changes to the Construction Documents shall be accomplished via Section 3.2.2 and Article 11 Changes.
- 8.3.5 No Substitutions Without Approval. ODR and A/E may receive and consider Contractor's request for substitution when Contractor agrees to reimburse Owner for review costs and satisfies the requirements of this section. If Contractor does not satisfy these conditions, ODR and A/E will return the request without action except to record noncompliance with these requirements. Owner will not consider the request if Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly. Contractor's request for a substitution may be considered by ODR and A/E when:
- 8.3.5.1 The Contract Documents do not require extensive revisions; and
 - 8.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of A/E and do not result in an increase in cost to Owner; and
 - 8.3.5.3 The request is timely, fully documented, properly submitted and one or more of the following apply:
 - 8.3.5.3.1 Contractor cannot provide the specified product, assembly or method of construction within the Contract Time;
 - 8.3.5.3.2 The request directly relates to an "or-equal" clause or similar language in the Contract Documents;
 - 8.3.5.3.3 The request directly relates to a "product design standard" or "performance standard" clause in the Contract

Documents;

- 8.3.5.3.4 The requested substitution offers Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities Owner must assume;
- 8.3.5.3.5 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and ODR can approve the requested substitution;
- 8.3.5.3.6 Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility;
- 8.3.5.3.7 Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where Contractor certifies they can coordinate the proposed substitution; or
- 8.3.5.3.8 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where Contractor certifies that the proposed substitution provides the required warranty.
- 8.3.5.3.9 The manufacturer of the specified product has been removed from production due to cancellation or obsolescence.

8.3.6 Unauthorized Substitutions at Contractor's Risk. Contractor is financially responsible for any additional costs or delays resulting from unauthorized substitution of materials, equipment or fixtures other than those specified. Contractor shall reimburse Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

8.4 Field Mock-up.

8.4.1 Mock-ups shall be constructed prior to commencement of a specified scope of work to confirm acceptable workmanship.

8.4.1.1 As a minimum, field mock-ups shall be constructed for roofing systems, exterior veneer / finish systems, glazing systems, and any other Work requiring a mock-up as identified throughout the Contract Documents. Mock-ups for systems not part of the Project scope shall not be required.

8.4.1.2 Mock-ups may be incorporated into the Work if allowed by the

Contract Documents and if acceptable to ODR. If mock-ups are freestanding, they shall remain in place until otherwise directed by Owner.

- 8.4.1.3 Contractor shall include field mock-ups in their Work Progress Schedule and shall notify ODR and A/E of readiness for review sufficiently in advance to coordinate review without delay.

8.5 Inspection During Construction.

8.5.1 Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner and its agents. “Reasonable times” of inspection allow for sufficient monitoring of the quality of materials and installation without substantially impeding the progress of the Work.

8.5.2 Contractor shall not cover up any Work with finishing materials or other building components prior to providing Owner and its agents an opportunity to perform an inspection of the Work.

8.5.2.1 Should corrections of the Work be required for approval, Contractor shall not cover-up corrected Work until Owner indicates approval.

8.5.2.2 Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to ODR of the anticipated need for a cover-up inspection. Should ODR fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work **after making every reasonable effort to contact the ODR and after documenting the Work**, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

Article 9. Construction Schedules

- 9.1 Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion within thirty (30) calendar days after Substantial Completion or a mutually agreed upon longer period of time between Contractor and Owner, Contractor shall be responsible for Owner's additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.
- 9.2 Notice to Proceed. Owner will issue a Notice to Proceed which shall state the dates for beginning Work and for achieving Substantial Completion of the Work.
- 9.3 Work Progress Schedule. Refer to Supplementary General Conditions or Special Conditions for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed to ODR and A/E. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents and acceptance of all the Work of the Contract. When acceptable to Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.
- 9.3.1 Schedule Requirements. Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for its completion. Contractor shall organize and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
- 9.3.1.1 Contractor shall resubmit initial schedule as required to address review comments from A/E and ODR until such schedule is accepted as the Baseline Schedule.
- 9.3.1.2 Submittal of a schedule, schedule revision or schedule update constitutes Contractor's representation to Owner of the accurate depiction of all progress to date and that Contractor will follow the schedule as submitted in performing the Work.

- 9.3.2 Schedule Updates. Contractor shall update the Work Progress Schedule and the Submittal Register monthly, as a minimum, to reflect progress to date and current plans for completing the Work, while maintaining original schedule as Baseline Schedule and submit paper and electronic copies of the update to A/E and ODR as directed, but as a minimum with each request for payment. Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. Contractor may revise the Work Progress Schedule when in Contractor's judgment it becomes necessary for the management of the Work. Contractor shall identify all proposed changes to schedule logic to Owner and to A/E via an executive summary accompanying the updated schedule for review prior to final implementation of revisions into a revised Baseline Schedule. Schedule changes that materially impact Owner's operations shall be communicated promptly to ODR and shall not be incorporated into the revised Baseline Schedule without ODR's consent.
- 9.3.3 The Work Progress Schedule is for Contractor's use in managing the Work and submittal of the schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning the Work. Owner's acceptance of a schedule, schedule update or revision constitutes Owner's agreement to coordinate its own activities with Contractor's activities as shown on the schedule.
- 9.3.3.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto does not indicate any approval of Contractor's proposed sequences and duration.
- 9.3.3.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute Owner's consent, alter the terms of the Contract, or waive either Contractor's responsibility for timely completion or Owner's right to damages for Contractor's failure to do so.
- 9.3.3.3 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the Substantial Completion Date(s) and Contract Time.
- 9.4 Ownership of Float. Unless indicated otherwise in the Contract Documents, Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of Contractor or Owner, but belongs to the Project and may be consumed by either party as needed on a first-used basis.
- 9.5 Completion of Work. Contractor is accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.

- 9.5.1 If, in the judgment of Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire work or a separable portion thereof, Contractor, when so informed by Owner, shall immediately take action to increase the rate of work placement by:
 - 9.5.1.1 An increase in working forces.
 - 9.5.1.2 An increase in equipment or tools.
 - 9.5.1.3 An increase in hours of work or number of shifts.
 - 9.5.1.4 Expedite delivery of materials.
 - 9.5.1.5 Other action proposed if acceptable to Owner.
- 9.5.2 Within ten (10) days after such notice from ODR, Contractor shall notify ODR in writing of the specific measures taken and/or planned to increase the rate of progress. Contractor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating Contractor's plan for achieving timely completion of the Project. Should ODR deem the plan of action inadequate, Contractor shall take additional steps or make adjustments as necessary to its plan of action until it meets with ODR's approval.
- 9.6 Modification of the Contract Time.
 - 9.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 11.
 - 9.6.2 When a delay defined herein as excusable prevents Contractor from completing the Work within the Contract Time, Contractor is entitled to an extension of time. Owner will make an equitable adjustment and extend the number of days lost because of excusable delay or Weather Days, as measured by Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project Substantial Completion date(s).
 - 9.6.2.1 A "Weather Day" is a day on which Contractor's current schedule indicates Work is to be done, and on which inclement weather and/or related site conditions prevent Contractor from performing seven (7) continuous hours of Work on the critical path between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, Contractor shall immediately notify ODR for confirmation of the conditions. At the end of each calendar month, submit to ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on

confirmation by ODR, any time extension granted will be issued by Change Order. If Contractor and Owner cannot agree on the time extension, Owner may issue a ULCO for fair and reasonable time extension.

9.6.2.2 Excusable Delay. Contractor is entitled to an equitable adjustment of the Contract Time, issued via change order, for delays caused by the following:

9.6.2.2.1 Errors, omissions and imperfections in design, which A/E corrects by means of changes in the Drawings and Specifications.

9.6.2.2.2 Unanticipated physical conditions at the Site, which A/E corrects by means of changes to the Drawings and Specifications or for which ODR directs changes in the Work identified in the Contract Documents.

9.6.2.2.3 Failure of Owner to have secured property, right-of-way or easements necessary for Work to begin or progress.

9.6.2.2.4 Changes in the Work that effect activities identified in Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by ODR or recommended by A/E and ordered by ODR.

9.6.2.2.5 Suspension of Work for unexpected natural events, Force Majeure (sometimes called "acts of God"), civil unrest, strikes or other events which are not within the reasonable control of Contractor.

9.6.2.2.6 Suspension of Work for convenience of ODR, which prevents Contractor from completing the Work within the Contract Time.

9.6.2.2.7 Administrative delays caused by activities or approval requirements related to an Authority Having Jurisdiction.

9.6.3 Contractor's relief in the event of such delays is the time impact to the critical path as determined by analysis of Contractor's schedule. In the event that Contractor incurs additional direct costs because of the excusable delays other than described in Subparagraph 9.6.2.2.4 and within the reasonable control of Owner, the Contract price and Contract Time are to be equitably adjusted by Owner pursuant to the provisions of Article 11.

9.7 No Damages for Delay. Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, including without limitation any act or omission of Owner.

- 9.8 Concurrent Delay. When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, Contractor may not be entitled to a time extension for the period of concurrent delay.
- 9.9 Other Time Extension Requests. Time extensions requested in association with changes to the Work directed or requested by Owner shall be included with Contractor's proposed costs for such change. Time extensions requested for inclement weather are covered by Paragraph 9.6.2.1 above. If Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give ODR written notice, stating the nature of the delay and the activities potentially affected, within five (5) days after the onset of the event or circumstance giving rise to the excusable delay. Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. State claims for extensions of time in numbers of whole or half days.
- 9.9.1 Within ten (10) days after the cessation of the delay, Contractor shall formalize its request for extension of time in writing to include a full analysis of the schedule impact of the delay and substantiation of the excusable nature of the delay. All changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in Article 11.
- 9.9.2 No extension of time releases Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such a bond. Those obligations remain in full force until the discharge of the Contract.
- 9.9.3 Contents of Time Extension Requests. Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:
- 9.9.3.1 The nature of the delay and its cause; the basis of Contractor's claim of entitlement to a time extension.
- 9.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in Contractor's Work Progress Schedule, and any concurrent delays.
- 9.9.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 9.9.4 Owner's Response. Owner will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.
- 9.9.4.1 Owner will not grant time extensions for delays that do not affect the

Contract Substantial Completion date.

9.9.4.2 Owner will respond to each properly submitted Time Extension Request within fifteen (15) days following receipt. If Owner cannot reasonably make a determination about Contractor's entitlement to a time extension within that time, Owner will notify Contractor in writing. Unless otherwise agreed by Contractor, Owner has no more than fifteen (15) additional days to prepare a final response. If Owner fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor is entitled to a time extension in the amount requested.

9.10 Failure to Complete Work Within the Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages shall be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in the Contract Documents.

9.11 Liquidated Damages. Owner may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Supplementary General Conditions or Special Conditions.

Article 10. Payments

- 10.1 Schedule of Values. Contractor shall submit to ODR and A/E for acceptance a Schedule of Values accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and of sufficient detail acceptable to ODR. The accepted Schedule of Values will be the basis for the progress payments under the Contract.
- 10.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by ODR, and submitted not less than twenty-one (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the Specifications and include itemized costs for general conditions, costs for preparing close out documents, staff training, if required, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Contract price. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.
- 10.1.1.1 Owner requires that the Work items be inclusive of the cost of the Work items only. Any contract markups for overhead and profit, general conditions, etc., shall be contained within separate line items for those specific purposes which shall be divided into at least two (2) lines, one (1) for labor and one (1) for materials.
- 10.1.2 Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal. Make the worksheets available to ODR at the time of Contract execution. Thereafter Contractor shall grant Owner during normal business hours access to said copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.
- 10.2. Progress Payments. Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on Site, or as otherwise agreed to by Owner and Contractor. Payment is not due until receipt by ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in Supplementary General Conditions, Special Conditions, and certified by A/E. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Owner will not process progress payment applications for Change Order Work until all parties execute the Change Order.
- 10.2.1 Preliminary Pay Worksheet. Once each month that a progress payment is to be requested, the Contractor shall submit to A/E and ODR a complete, clean copy of a preliminary pay worksheet or preliminary pay application, to include the following:

- 10.2.1.1 Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the established Schedule of Values;
 - 10.2.1.2 An updated Work Progress Schedule including the executive summary and all required schedule reports;
 - 10.2.1.3 HUB subcontracting plan Progress Assessment Report as required in Paragraph 4.2.5.1;
 - 10.2.1.4 Such additional documentation as Owner may require as set forth in the Supplementary General Conditions or elsewhere in the Contract Documents; and
 - 10.2.1.5 Construction payment affidavit. ***The referenced affidavit is the Contractor's Progress Payment Affidavit***
- 10.2.2 Contractor's Application for Payment. As soon as practicable, but in no event later than seven (7) days after receipt of the preliminary pay worksheet, A/E and ODR will meet with Contractor to review the preliminary pay worksheet and to observe the condition of the Work. Based on this review, ODR and A/E may require modifications to the preliminary pay worksheet prior to the submittal of an Application for Payment, and will promptly notify Contractor of revisions necessary for approval. As soon as practicable, Contractor shall submit its Application for Payment on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by A/E and/or ODR. Attach all additional documentation required by ODR and/or A/E, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with Contractor's Application for Payment are paid or will be paid within the time specified in Tex. Gov't Code, Ch. 2251. No Application for Payment is complete unless it fully reflects all required modifications, and attaches all required documentation including Contractor's affidavit.
- 10.2.3 Certification by Architect/Engineer. Within five (5) days or earlier following A/E's receipt of Contractor's formal Application for Payment, A/E will review the Application for Payment for completeness, and forward it to ODR. A/E will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Application for Payment is incomplete, Contractor shall make the required corrections and resubmit the Application for Payment for processing.
- 10.3 Owner's Duty to Pay. Owner has no duty to pay the Contractor except on receipt by ODR of: 1) a complete Application for Payment certified by A/E; 2) Contractor's updated Work Progress Schedule; and 3) confirmation that Contractor's record documentation at the Site is kept current.

- 10.3.1 Payment for stored materials and/or equipment confirmed by Owner and A/E to be on-site or otherwise properly stored is limited to eighty-five (85) percent of the invoice price or eighty-five (85) percent of the scheduled value for the materials or equipment, whichever is less.
- 10.3.2 Retainage. Owner will withhold from each progress payment, as retainage, five (5) percent of the total earned amount, the amount authorized by law, or as otherwise set forth in the Supplementary General Conditions or Special Conditions. Retainage is managed in conformance with Tex. Gov't Code, Ch. 2252, Subch. B. ***The Owner shall withhold as retainage ten percent (10%) of the amount of each progress payment on all contracts estimated at time of execution to cost less than \$400,000 and five percent (5%) of the amount of each progress payment on all contracts estimated at the time of execution to cost \$400,000 or more.***
- 10.3.2.1 Contractor shall provide written consent of its surety for any request for reduction or release of retainage.
- 10.3.2.2 At least sixty-five (65) percent of the Contract, or such other discrete Work phase as set forth in Subsection 12.1.6 or Work package delineated in the Contract Documents, must be completed before Owner can consider a retainage reduction or release.
- 10.3.2.3 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection, unless otherwise acceptable to Owner.
- 10.3.3 Price Reduction to Cover Loss. Owner may reduce any Application for Payment, prior to payment to the extent necessary to protect Owner from loss on account of actions of Contractor including, but not limited to, the following:
- 10.3.3.1 Defective or incomplete Work not remedied;
- 10.3.3.2 Damage to Work of a separate Contractor;
- 10.3.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time;
- 10.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents;
- 10.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;
- 10.3.3.6 Assessment of fines for violations of prevailing wage rate law; or
- 10.3.3.7 Failure to include the appropriate amount of retainage for that

periodic progress payment.

10.3.3.8 Failure to maintain or allow Owner's inspection of payroll records.

10.3.4 Title to all material and Work covered by progress payments transfers to Owner upon payment.

10.3.4.1 Transfer of title to Owner does not relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until substantial completion, responsibility for the care and protection of materials and Work in areas where punch list items are completed until final completion or the restoration of any damaged Work, or waive the right of Owner to require the fulfillment of all the terms of the Contract.

10.4 Progress Payments. Progress payments to Contractor do not release Contractor or its surety from any obligations under the Contract.

10.4.1 Upon Owner's request, Contractor shall furnish manifest proof of the status of Subcontractor's accounts in a form acceptable to Owner.

10.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by Contractor.

10.4.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.

10.4.4 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when ODR approves the Application for Payment.

10.5 Off-Site Storage. With prior approval by Owner and in the event Contractor elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by Owner.

10.5.1 Store materials in a commercial warehouse meeting the criteria stated below.

10.5.2 Provide insurance coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance, made out to insure the State agency which is signatory to the Contract, must be filed with Owner's representative.

10.5.3 Inspection by Owner's representative is allowed at any time. Owner's inspectors must be satisfied with the security, control, maintenance, and preservation measures.

- 10.5.4 Materials for this Project are physically separated and marked for the Project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.
- 10.5.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.
- 1. 10.5.6 With each monthly payment estimate, submit a report to ODR and A/E listing the quantities of materials already paid for and still stored in the off-site location.
- 10.5.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.
- 10.5.8 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by ODR. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site.
- 10.6 Time for Payment by Contractor Pursuant to Tex. Gov't Code § 2255.022.
 - 10.6.1 Contractor who receives a payment from a governmental entity shall pay Subcontractor the appropriate share of the payment not later than the tenth (10th) day after the date Contractor receives the payment.
 - 10.6.2 The appropriate share is overdue on the eleventh (11th) day after the date Contractor receives the payment.

Article 11. Changes

- 11.1 Change Orders. A Change Order issued after execution of the Contract is a written order to Contractor, signed by ODR, Contractor, and A/E, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. ODR may issue a written authorization for Contractor to proceed with Work of a Change Order in advance of final execution by all parties in accordance with Section 11.9.
- 11.1.1 Owner, without invalidating the Contract, **and without approval of the Contractor's Surety**, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order or ULCO, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order or a ULCO.
- 11.1.2 It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings, or any changes in or additions to same or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor's costs and expenses arising out of such errors, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, as permitted under Tex. Gov't Code, Ch. 2260.
- 11.1.3 Procedures for administration of Change Orders shall be established by Owner and stated in Supplementary General Conditions, Special Conditions, or elsewhere in the Contract Documents. **Procedures for administration of Change Orders will be provided at the Pre-Construction Conference.**
- 11.1.4 No verbal order, verbal statement, or verbal direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.

- 11.1.5 Contractor agrees that Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of Contractor. Further, Contractor agrees to include in all its subcontracts a provision to the effect that Subcontractor agrees that Owner or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor relating to any claim arising from the Contract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein which relates to appeals under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of the Contract shall continue until final disposition of such claims, appeals or litigation.
- 11.2 Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as provided in the Supplementary General Conditions or Special Conditions or as agreed to by the parties and incorporated into a Change Order.
- 11.3 Claims for Additional Costs.
- 11.3.1 If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, they shall give Owner and A/E written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim, but, in any case before proceeding to execute the Work considered to be additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Subsection 7.2.1. No such claim shall be valid unless so made. If Owner and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 15. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or a ULCO.
- 11.3.2 If Contractor claims that additional cost is involved because of, but not limited to, 1) any written interpretation of the Contract Documents, 2) any order by Owner to stop the Work pursuant to Article 14 where Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Section 11.4, Contractor shall make such claim as provided in Subsection 11.3.1.
- 11.3.3 Should Contractor or his Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents, but claim additional costs for corrective Work after Contract award, Owner may assume intent to circumvent competitive bidding for necessary corrective Work. In such case, Owner may choose to let a separate Contract for the corrective Work, or issue a ULCO to require performance by Contractor. Claims for time extensions or

for extra cost resulting from delayed notice of patent Contract Document discrepancies or omissions will not be considered by Owner.

- 11.4 Minor Changes. A/E, with concurrence of ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which Contractor shall carry out promptly and record on As-Built ~~record~~ documents.
- 11.5 Concealed Site Conditions. Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, ODR and A/E shall be notified in writing of such conditions before they are further disturbed or subsequent related work proceeds. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of ODR.
- 11.6 Extension of Time. All changes to the Contract Time shall be made as a consequence of requests as required under Section 9.6, and as documented by Change Order as provided under Section 11.1.
- 11.7 Administration of Change Order Requests. All changes in the Contract shall be administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.
- 11.7.1 Routine changes in the construction Contract shall be formally initiated by A/E by means of a PCO form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by A/E and ODR will be required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.
- 11.7.2 All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor

shall provide written response to a change request within twenty-one (21) days of receipt.

- 11.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.
- 11.7.4 Emergency changes to save life or property may be initiated by Contractor alone (see Section 7.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.
- 11.7.5 The method of incorporating approved Change Orders into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to ODR.
- 11.8 Pricing Change Order Work. The amounts that Contractor and/or its Subcontractor adds to a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner.
- 11.8.1 For Work performed by its forces, Contractor will be allowed their actual costs for materials, the total amount of wages (including benefits) paid for labor, plus the total cost of State and Federal payroll taxes and of worker's compensation and comprehensive general liability insurance, plus additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Allowable percentages for overhead and profit on any specific change shall not exceed fifteen (15) percent for the first \$10,000 of value for self-performed work or portion thereof, ten (10) percent for the second \$10,000 of value for self-performed work or portion thereof and seven and a half (7.5) percent for any value of the self-performed work that exceeds \$20,000.
- 11.8.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's Work, all Subcontractor costs shall be combined, and to that total Subcontractor cost Contractor will be allowed to add a maximum mark-up of ten (10) percent for the first \$10,000 of subcontracted Work value or portion thereof, seven and half (7.5) percent for the second \$10,000 of subcontracted Work value or portion thereof, and five (5) percent for any value of the subcontracted Work exceeding \$20,000.
- 11.8.3 On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. Owner does

not accept and will not pay for additional Contract cost identified as indirect or consequential damages.

- 11.8.4 For Contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up on any Change Order Work unless the Change Order increases the Guaranteed Maximum Price.
- 11.8.5 ***If the parties cannot agree on an equitable adjustment for labor hours attributable to a change, they shall use the Means Facility Cost Data as a guide for labor hours as a basis of negotiation.***
- 11.9 Unilateral Change Order (ULCO). Owner may issue a written ULCO directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract price and/or the Contract Time.
- 11.9.1 Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a ULCO. As the changed Work is performed, Contractor shall submit its costs for such Work with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the ULCO. The Parties reserve their rights as to the disputed amount, subject to Article 15.
- 11.10 Final Resolution of Changes. Upon execution of a Change Order and /or a ULCO by Owner, Contractor and A/E, all costs and time issues regarding that change are final and not subject to additive adjustments.

Article 12. Project Completion and Acceptance

12.1 Closing Inspections.

12.1.1 Substantial Completion Inspection. When Contractor considers the entire Work or part thereof Substantially Complete, it shall notify ODR in writing **fifteen (15) working days prior to the Substantial Completion inspection** that the Work will be ready for Substantial Completion inspection on a specific date. Contractor shall include with this notice Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, noting items it has corrected and included all remaining work items with date scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the Project from being used as intended, Contractor shall not request a Substantial Completion Inspection. Owner and its representatives will review the list of items and schedule the requested inspection, or inform Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on Contractor's list.

12.1.1.1 Prior to the Substantial Completion inspection and as specified in the Special Conditions, Contractor shall furnish a copy of its marked-up ~~Record~~ **As-Built** Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties, and like publications or parts for all installed equipment, systems, and like items as described in the Contract Documents. Delivery of these items is a prerequisite for requesting the Substantial Completion inspection.

12.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, A/E, ODR, Contractor, and other Owner representatives as determined by Owner will jointly attend the Substantial Completion inspection, which shall be conducted by ODR or their delegate. If ODR determines that the Work is Substantially Complete, ODR will issue a Certificate of Substantial Completion to be signed by A/E, Owner, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security, maintenance, insurance and utilities. A/E will provide with this certificate a consolidated list of Punchlist items (the pre-final Punchlist including all items noted by the various inspecting parties) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If Owner

occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of Owner, without disruption to Owner's use of the Project for its intended purposes.

12.1.2 Final Inspection. Contractor shall complete the list of items identified on the pre-final Punchlist prior to requesting a final inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the Certificate of Substantial Completion, Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the pre-final Punchlist work, Contractor shall give written notice to ODR and A/E that the Work will be ready for final inspection on a specific date. Contractor shall accompany this notice with a copy of the updated pre-final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, ODR, A/E and Contractor will inspect the Work. A/E will submit to Contractor a final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.

12.1.2.1 Correct or complete all items on the final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the final Punchlist. Upon completion of the final Punchlist, notify A/E and ODR in writing stating the disposition of each final Punchlist item. A/E, Owner, and Contractor shall promptly inspect the completed items. When the final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents ODR will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to Contractor's right to receive Final Payment.

12.1.3 Annotation. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by Owner.

12.1.4 Purpose of Inspection. Inspection is for determining the completion of the Work, and does not relieve Contractor of its overall responsibility for completing the Work in a good and competent fashion, in compliance with the Contract. Work accepted with incomplete Punchlist items or failure of Owner or other parties to identify Work that does not comply with the Contract Documents or is defective in operation or workmanship does not constitute a waiver of Owner's rights under the Contract or relieve Contractor of its responsibility for performance or warranties.

12.1.5 Additional Inspections.

12.1.5.1 If Owner's inspection team determines that the Work is not substantially complete at the Substantial Completion inspection, ODR or A/E will give Contractor written notice listing cause(s) of

the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to ODR. Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion inspection.

12.1.5.2 If Owner's inspection team determines that the Work is not complete at the final inspection, ODR or A/E will give Contractor written notice listing the cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to ODR. Contractor shall complete or correct all Work so designated prior to again requesting a final inspection.

12.1.5.3 The Contract contemplates three (3) comprehensive inspections: the Substantial Completion inspection, the Final Completion inspection, and the inspection of completed final Punchlist items. The cost to Owner of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of Contractor. Owner may issue a ULCO deducting these costs from Final Payment. Upon Contractor's written request, Owner will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion inspection is not corrective Work for purposes of determining timely completion, or assessing the cost of additional inspections.

12.1.6 Phased Completion. The Contract may provide, or Project conditions may warrant, as determined by ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to closing inspections, occupancy, and acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion certificate.

Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate.

12.2 Owner's Right of Occupancy. Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, ODR will notify Contractor in writing and identify responsibilities for security, maintenance, insurance and utilities. Work performed on the premises by third parties on Owner's behalf does not constitute occupation or use of the Work by Owner for purposes of this Article. All Work performed by Contractor after occupancy, whether in part or in whole, shall be at the convenience of Owner so as to not disrupt Owner's use of, or access to occupied areas of the Project.

12.3 Acceptance and Payment

- 12.3.1 Request for Final Payment. Following the certified completion of all work, including all final Punchlist items, cleanup, and the delivery of ~~record~~ **As-Built** documents, Contractor shall submit a certified Application for Final Payment and include all sums held as retainage and forward to A/E and ODR for review and approval.
- 12.3.2 Final Payment Documentation. Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, maintenance and operating instructions, guarantees and warranties, certificates, ~~Record~~ **As-Built** Documents and all other items required by the Contract. Contractor shall submit evidence of return of access keys and cards, evidence of delivery to Owner of attic stock, spare parts, and other specified materials. Contractor shall submit consent of surety to Final Payment form and an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, after payment from Owner or otherwise satisfied within the period of time required by Tex. Gov't Code, Ch. 2251. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of Subcontractor or vendor unless Contractor's affidavit notes that claim as an exception. ***The Affidavit referred to above is the Contractor's Final Payment Affidavit.***
- 12.3.3 Architect/Engineer Approval. A/E will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, A/E will either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; or 2) accept it, note their approval, and send to Owner.
- 12.3.4 Offsets and Deductions. Owner may deduct from the Final Payment all sums due from Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, Owner will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first (21st) day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a ULCO as may be applicable.
- 12.3.5 Final Payment Due. Final Payment is due and payable by Owner, subject to all allowable offsets and deductions, on the thirtieth (30th) day following Owner's approval of the Application for Payment. If Contractor disputes any amount deducted by Owner, Contractor shall give notice of the dispute on or before the thirtieth (30th) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.
- 12.3.6 Effect of Final Payment. Final Payment constitutes a waiver of all claims by Owner, relating to the condition of the Work except those arising from:
- 12.3.6.1 Faulty or defective Work appearing after Substantial Completion

(latent defects);

- 12.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;
 - 12.3.6.3 Terms of any warranties required by the Contract, or implied by law; or
 - 12.3.6.4 Claims arising from personal injury or property damage to third parties.
- 12.3.7 Waiver of Claims. Final payment constitutes a waiver of all claims and liens by Contractor except those specifically identified in writing and submitted to ODR prior to the application for Final Payment.
- 12.3.8 Effect on Warranty. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by Contractor and closed until the expiration of all warranty periods. Issuance of Final Payment does not alter Contractor's contractual obligations during the warranty period.

Article 13. Warranty and Guarantee

- 13.1 Contractor's General Warranty and Guarantee. Contractor warrants to Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the required finish and workmanship. Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by Owner, at any time, or by any repair or correction of such defect made by Owner.
- 13.2 Warranty Period. Except as may be otherwise specified or agreed, Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work **or at Final Completion if no Substantial Completion inspection is held**. If Substantial Completion occurs by phase, then the warranty period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work.
- 13.3 Limits on Warranty. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
- 13.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of Contractor.
- 13.3.2 Normal wear and tear under normal usage after acceptance of the Work by Owner.
- 13.4 Events Not Affecting Warranty. Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of defective Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
- 13.4.1 Observations by Owner and/or A/E;
- 13.4.2 Recommendation to pay any progress or final payment by A/E;
- 13.4.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;

- 13.4.4 Use or occupancy of the Work or any part thereof by Owner;
 - 13.4.5 Any acceptance by Owner or any failure to do so;
 - 13.4.6 Any review of a Shop Drawing or sample submittal; or
 - 13.4.7 Any inspection, test or approval by others.
- 13.5 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor. ODR will certify the date of service commencement in the Substantial Completion certificate.
- 13.5.1 In addition to Contractor's warranty and duty to repair, Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
 - 13.5.2 Contractor may satisfy any such obligation by obtaining and assigning to Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by Owner which does not fully comply with the requirements of the Contract, Contractor remains liable to Owner on all elements of the required warranty not provided by the assigned warranty.
- 13.6 Correction of Defects. Upon receipt of written notice from Owner, or any agent of Owner designated as responsible for management of the warranty period, of the discovery of a defect, Contractor shall promptly remedy the defect(s), and provide written notice to Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to Owner, or if Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, Owner may correct the defect and be reimbursed the cost of remedying the defect from Contractor or its surety.
- 13.7 Certification of No Asbestos Containing Materials or Work. Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA– 40 C.F.R. § 763-99(7)) from all Subcontractors and materials suppliers, and shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of their Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's application for Final Payment.

Article 14. Suspension and Termination

- 14.1 Suspension of Work for Cause. Owner may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.
- 14.1.1 Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.
- 14.1.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.
- 14.1.3 Suspension of Work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.
- 14.2 Suspension of Work for Owner's Convenience. Upon seven (7) days written notice to Contractor, Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty (30) days for its own convenience. Owner will give Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, and the date on which the suspension of Work will cease. When such a suspension prevents Contractor from completing the Work within the Contract Time, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.
- 14.3 Termination by Owner for Cause.
- 14.3.1 Upon written notice to Contractor and its surety, Owner may, without prejudice to any right or remedy, terminate the Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:

- 14.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials;
 - 14.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including ODR;
 - 14.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to ensure its completion within the time, or any approved extension thereof, specified in the Contract;
 - 14.3.1.4 Failure to remedy defective work condemned by ODR;
 - 14.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Ch. 2251;
 - 14.3.1.6 Persistent endangerment to the safety of labor or of the Work;
 - 14.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract;
 - 14.3.1.8 Any material breach of the Contract; or
 - 14.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.
- 14.3.2 Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 14.3.3 Should Owner decide to terminate the Contract under the provisions of Section 14.3, it will provide to Contractor and its surety thirty (30) days prior written notice.
- 14.3.4 Should Contractor or its surety, after having received notice of termination, demonstrate to the satisfaction of Owner that Contractor or its surety are proceeding to correct such default with diligence and promptness, upon which the notice of termination was based, the notice of termination may be rescinded in writing by Owner. If so rescinded, the Work may continue without an extension of time.
- 14.3.5 If Contractor or its surety fails, after written notice from Owner to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within thirty (30) days following receipt of notice, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
- 14.3.5.1 This amount includes the cost of additional Owner costs such as A/E services, other consultants, and contract administration.

- 14.3.5.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.
- 14.3.5.3 This obligation for payment survives the termination of the Contract.
- 14.3.5.4 Owner reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. ODR will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.
- 14.4 Conversion to Termination for Convenience. In the event that any termination of Contractor for cause under Section 14.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience under Section 14.5 and Contractor's recovery for termination shall be strictly limited to the payments allowable under Section 14.5.
- 14.5 Termination for Convenience of Owner. Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:
 - 14.5.1 Owner will immediately notify Contractor and A/E in writing, specifying the reason for and the effective date of the Contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
 - 14.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
 - 14.5.2.1 Stop all work.
 - 14.5.2.2 Place no further subcontracts or orders for materials or services.
 - 14.5.2.3 Terminate all subcontracts for convenience.
 - 14.5.2.4 Cancel all materials and equipment orders as applicable.
 - 14.5.2.5 Take action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.
 - 14.5.3 When the Contract is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work executed. Contractor may not claim lost profits on other work or lost business opportunities.

- 14.6 Termination By Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days written notice to ODR, terminate the Contract and recover from Owner payment for all Work executed, but not lost profits on other work or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, Contractor may not terminate the Contract.
- 14.7 Settlement on Termination. When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, Owner may determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

Article 15. Dispute Resolution

- 15.1 Unresolved Contractor Disputes. The dispute resolution process provided for in Tex. Gov't Code, Ch. 2260, **and the procedures provided in Title 31, Part 2, Chapter 51, Subchapter J of the Texas Administrative** or Tex. Civ. Prac. & Rem. Code, Ch. 114, shall be used by Contractor to attempt to resolve any claim for breach of Contract made by Contractor that is not resolved under procedures described throughout the Uniform General Conditions, Supplementary Conditions, or Special Conditions of the Contract.
- 15.2 Alternative Dispute Resolution Process. Owner may establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov't Code, Ch. 2260 or Tex. Civ. Prac. & Rem. Code, Ch. 114.
- 15.3 Nothing herein shall hinder, prevent, or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.
- 15.4 Nothing herein shall waive or be construed as a waiver of the State's sovereign immunity.

Article 16. Miscellaneous

- 16.1 Supplementary General and Special Conditions. When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplementary General and Special Conditions as described below:
- 16.1.1 Supplementary General Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplementary General Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplementary General Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects.
- 16.1.2 Special Conditions shall relate to a particular Project and be unique to that Project but shall not weaken the character or intent of the Uniform General Conditions.
- 16.2 Federally Funded Projects. On Federally funded projects, Owner may waive, suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by Owner of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.
- 16.3 Internet-based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers or payment requests and processing, amendment, Change Orders and other administrative activities.
- 16.3.1 Accessibility and Administration.
- 16.3.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.
- 16.3.1.2 Owner shall administer the software.
- 16.3.2 Training. When used, Owner shall provide training to the Project team members.
- 16.4 Administrative Inspections and Audits. Contractor agrees that all relevant records related to this Contract or any work product under this Contract, including practices of

its Subcontractors, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Texas Attorney General, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Subcontracts shall reflect the requirements of this section. In addition, pursuant to Tex. Gov't Code § 2262.003 the SAO may conduct an audit or investigation of any entity receiving funds under this Contract, including direct payments to Contractor and indirect payments under a Subcontract to this Contract; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.

End of Uniform General Conditions

2018 SUPPLEMENTARY GENERAL CONDITIONS TO THE STATE OF TEXAS 2015 EDITION OF THE UNIFORM GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

The following Supplementary General Conditions amend and/or supplement the 2015 edition of the Uniform General Conditions for Construction Contracts.

Article 5. Bonds and Insurance

5.2 Insurance Requirements.

Subsection 5.2.4 is supplemented to add the following new paragraphs:

- 5.2.4.1 Contractor shall deliver to Owner true and complete copies of the General Contractor's certificates prior to the issuance of any Notice to Proceed.
- 5.2.4.2 Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- 5.2.4.3 The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- 5.2.4.4 The insurance coverage and limits established in the Uniform General Conditions, Supplementary General Conditions, or Special Conditions shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.

Article 2. Wage Rates and Other Laws Governing Construction

Add Section 2.7 as follows:

2.7 Buy America Requirements for Iron and Steel Used in Construction. In accordance with Texas Government Code 2252, Section 2252.202, all iron or steel products (i.e., rolled structural shapes including wide flange beams and columns, angles, bars, plates, sheets, hollow structural sections, pipe, etc.) shall be produced, manufactured and fabricated in the United States.

End of Supplementary General Conditions

EXHIBIT F

DIVISION 1 – GENERAL REQUIREMENTS

SECTION 01 00 10 – SPECIAL CONDITIONS – DESIGN-BUILD – CONSTRUCTION PHASE

PART 1 – GENERAL

1.01 RELATED DOCUMENTS:

Drawings and general provisions of Contract, including Uniform General and Supplementary General Conditions and other Division 1 specification sections, apply to work of this section.

1.02 DESCRIPTION OF WORK:

Furnish all labor, materials, tools, equipment and incidentals necessary for performance of all work associated with Project information below, such work being as more particularly described in these Special Conditions, the drawings, and elsewhere in these Invitation for Bids and Contract Documents.

Project No.	1111304
Project Location	Franklin Mountains State Park
Project Title	Water System Development – New Well

1.03 INTENT OF THE CONTRACT DOCUMENTS: **(See also UGC, Article 6)**

- A. The intent of the Contract Documents is to include all of the work for the contract price and within the contract time. Contract Documents are to be considered as cooperative. All work not specified and/or not shown on the drawings, but which is necessary for the completion and/or functioning and operation of the project, shall be understood and implied as part of the contract to be performed by the Contractor for the contract price. Such work shall be executed by the Contractor in the same manner and with the same character of material as other portions of the contract without extra compensation.
- B. It is the intention of the Contract Documents to call for finished work, tested, and ready for operation.
 - 1. Any apparatus, material or work described in the Contract Documents and any incidental accessories necessary to make the work complete in all respects and ready for operation (even though not particularly specified) shall be furnished, delivered, and installed by the Contractor without additional expense to the Owner.
 - 2. Minor details not usually shown or specified but necessary for proper installation and operation are included in the work just as if herein specified or shown.

EXHIBIT F

- C. All work shall be performed and furnished by the Contractor in accordance with accepted construction industry practices.
- D. A duplication of work is not intended by the Contract Documents and any duplication shall not become a basis for extra cost to the Owner.
- E. Explanatory notes on the drawings shall take precedence over conflicting drawn-out indications. Figured dimensions on drawings shall take precedence over scale measurements. Where figures are lacking, scale measurements may be followed, but in all cases the measurements are to be checked from the work in place and those measured dimensions taken at the site shall take precedence over scale dimensions in drawings.
- F. Upon discovery by Contractor of errors, omissions or inconsistencies in the Contract Documents, Contractor shall promptly report them to the Owner and shall wait for instruction from Owner prior to proceeding with the work.
- G. In the event of conflict between the Special Conditions, the Supplementary Conditions, and the Uniform General Conditions, the following priority order shall apply in resolving such conflicts: Special Conditions, Supplementary Conditions, and then Uniform General Conditions.
- H. The drawings consist of all project drawings and any drawings issued by addenda.

1.04 AGENCY PROJECT MANAGEMENT SYSTEM

TPWD utilizes a Project Management Information System called eBuilder™ to manage its construction projects. eBuilder™ is a cloud-based system that is accessible anywhere there is a web connection. eBuilder™ will be used by the Owner, Architect/Engineer and the Contractor for tasks including, but not limited to the following:

- A. Contractor Application for Payment request(s)
- B. Submittals
- C. Request for Information (RFI)
- D. Construction Reports
- E. Architect Supplemental Information (ASI)
- F. Change Order documentation
- G. Progress Meeting Minutes
- H. Site Observation Reports
- I. Inspection Reports
- J. Outsourced (3rd party) Testing Reports
- K. general correspondence
- L. any other Owner requested tasks and/or documents

The TPWD Project Manager will provide an overview of the system and coordinate training for the Contractor's use of the system. The TPWD Project Manager will also

EXHIBIT F

assign users with login credentials and ensure required levels of access are established.

The eBuilder™ website is: (<https://gov.e-builder.net>)

1.05 SUBMITTAL REVIEW AND PROCESSING: (Refer also to UGC, Article 8)

A. GENERAL

Any and all costs, direct or indirect, incurred by Owner in reviewing submittals in excess of two (2) times will be charged to the Contractor and deducted from the total price for the work in accordance with the Uniform General Conditions, Article 10, 10.3.3.

1. Contractor will be provided, in Owner's Notice to Proceed, an Excel spreadsheet of the list of expected submittals from the Architect / Engineer of Record for their use in creating a submittal register per the requirements of the Uniform General conditions, Article 8.3.1.
2. Once received from the Contractor, TPWD will upload the Contractor's submittal register into eBuilder™ and the Contractor may begin the submittal process. Training will be provided by the Owner to the Contractor.

1.06 CONTRACT COMPLETION: (**See also UGC, Article 9**)

- A. Unless specifically stated as "working day," the term "day" or "calendar day" shall mean every day of the calendar year. Along with the Work Progress Schedule, the Contractor shall submit his schedule for normal working days.
- B. **Liquidated Damages:** The Owner has determined that the completion of the work in this contract is critical to the proper operation of the facility, and the Contractor's failure to complete the work within such time will cause damage to the Owner. Since exact damages are difficult to determine or forecast, the sum of **\$1,083.48** per calendar day is hereby established by the parties as a reasonable estimate of just compensation to the Owner for the failure of the Contractor to complete the work by the time set forth in the contract or authorized extension thereto. Said sum will be deducted from the money due or to become due to the Contractor, not as a penalty but as liquidated damages from added expense, including administrative and inspection costs, for each and every calendar day the work or any portion thereof remains incomplete after the expiration of the time limit set in the contract or authorized extension.
- C. Charges for liquidated damages will begin accumulating on the first calendar day following the final contract completion date and continue until the date of final acceptance as established by the Owner. Final acceptance will not be issued until all punch list items have been completed.

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- D. Expiration or termination of the contract for any reason does not release Respondent from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

1.07 SPECIAL INSURANCE REQUIREMENTS: (See also UGC, Article 5)

A. Workers' Compensation Insurance Coverage:

1. Definitions:

Certificate of coverage ("Certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Texas Labor Code §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

2. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

3. The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

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4. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
5. The Contractor shall obtain from each person providing services on a project, and provide to Owner:
 - a. a certificate of coverage, prior to that person beginning work on the project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - b. no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
6. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
7. The Contractor shall notify the Owner in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
8. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers' Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
9. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - b. provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - c. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

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10. obtain from each other person with whom it contracts, and provide to the contractor:

- a. certificate of coverage, prior to the other person beginning work on the project; and
- b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

11. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

12. notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

13. contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

14. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

15. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

B. Builder's Risk (or Installation Floater for Equipment Installation Only): Builder's Risk is a requirement of this Invitation for Bids and Contract Documents.

C. Windstorm Coverage: For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided limits shall be equal to 100 percent of the Contract Sum.

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- D. Flood Prone Areas:** For those properties located in flood prone areas, flood insurance coverage must be provided with limits shall be equal to 100 percent of the Contract Sum.
- E. Umbrella Liability Insurance:** Contractor shall obtain, pay for and maintain umbrella liability insurance for a period not to expire or terminate prior to the expiration of all warranty periods, insuring Contractor for an amount of not less than amount specified in the Supplementary General Conditions or Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide “drop down” coverage where underlying primary insurance coverage limits are exhausted or otherwise unavailable or inadequate to cover a loss. The amount of coverage required for umbrella liability insurance is One Million and No/100 Dollars (\$1,000,000.00).

1.08. REFERENCES AND STANDARDS:

All contractors, including sub-contractors shall ensure all personnel follow the adopted Standardized Building Codes in all design and construction work.

1.09 NON-APPROPRIATION OF FUNDS:

The contract is subject to termination or cancellation, without penalty to TPWD, either in whole or in part, subject to the availability of state funds. TPWD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TPWD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TPWD’s or contractor’s delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TPWD will not be liable to contractor for any damages, which are caused or associated with such termination, or cancellation and TPWD will not be required to give prior notice.

1.10 ANTIQUITIES:

Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the ODR and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner’s property shall remain property of State of Texas, the Texas Historical Commission. It is determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on Project Site is

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necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation.

1.11 PROPRIETARY OR CONFIDENTIAL INFORMATION; TEXAS PUBLIC INFORMATION ACT:

A. Any proprietary, trade secret or otherwise confidential information Bidder includes in its Bid must be clearly labeled as proprietary or confidential information, and Bidder must identify the specific exception to disclosure in the Public Information Act (PIA). Merely making a blanket claim the entire Bid is protected from disclosure because it contains some proprietary information is not acceptable and shall make the entire Bid subject to release under the PIA. In order for the Owner to initial the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Bid that are considered by the Bidder to be proprietary or confidential must be clearly labeled as described herein. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA.

B. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code ("the Texas Public Information Act").

C. In accordance with Section 2252.907 of the Texas Government Code, Bidder is required to make any information created or exchanged with the State pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no charge to the state. Bidder will make sure information not excepted from disclosure available in an electronic format that is accessible to the public unless Contractor receives written approval from Owner to provide information in a different format, and such approval becomes a part of this Contract.

1.12 CONTRACTING INFORMATION RESPONSIBILITIES:

In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract, (2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the Contractor on request of the Owner, and (3) on termination or expiration of the contract, either provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the Contractor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the contract and the Contractor agrees that the contract can be terminated if the

EXHIBIT F

Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

1.13 RIGHT TO AUDIT/RECORDS RETENTION:

Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Contractor or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the work of this Contract. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TPWD and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize TPWD and the State of Texas to immediately assess appropriate damages for such failure.

1.14 IMMIGRATION REFORM:

The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment

EXHIBIT F

verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

1.15 CIVIL RIGHTS:

The Contractor agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Contract shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

1.16 FEDERAL, STATE AND LOCAL REQUIREMENTS:

Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Worker's Compensation coverage or federal or State withholding requirements. **Contractor shall indemnify the State of Texas and shall pay all costs, penalties or losses resulting from Contractor's omission or breach of this Section.**

1.17 SEVERABILITY CLAUSE:

If any provision of this Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will remain in full force and effect.

1.18 SOVEREIGN IMMUNITY:

Nothing in this Contract shall be construed as a waiver of the Owner's or the State's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies or immunities available to the Owner or the State of Texas. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies or immunities available to the Owner or the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be

EXHIBIT F

considered as a basis for estoppel. The Owner does not waive any privileges, rights, defenses or immunities available to the Owner by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

1.19 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES:

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com Code, Chapter 17 or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

1.20 FELONY CRIMINAL CONVICTIONS:

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred, Contractor has fully advised the Owner in writing of the facts and circumstances surrounding the convictions.

1.21 ASSIGNMENTS:

The Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the Owner. Any attempted assignment in violation of this provision is void and without effect.

1.22 INDEPENDENT CONTRACTOR:

Contractor and Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Contractor nor Owner is an agent of the other and neither may make any commitments on the other party's behalf. Should Contractor subcontract any of the services required in the contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), Owner is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Contractor shall have no claim against Owner for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and Owner.

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1.23 PATENTS, TRADEMARKS OR COPYRIGHTS:

Contractor agrees to defend and indemnify the Owner and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the Owner's or the State's use of any good or service provided by the Contractor as a result of this solicitation.

1.24 FORCE MAJEURE:

Neither Contractor nor Owner shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. The Owner may grant relief from performance of contract if the Contractor is prevented from performance by such an act. The burden of proof for the need of such relief shall rest upon the Contractor. To obtain release based on force majeure, the Contractor shall file a written request with the Owner.

1.25 DISASTER RECOVERY PLAN:

Upon request of Owner, Contractor shall provide descriptions of its business continuity and disaster recovery plans.

~~1.26 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM; RESERVED~~

~~1.26~~

~~Contractor certifies that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:~~

~~A. All persons employed to perform duties within Texas, during the term of the Contract; and~~

~~B. All persons, including subcontractors, assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.~~

~~The Contractor shall provide, upon request of Texas Parks and Wildlife Department, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.~~

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~~If it is determined that Contractor has violated the certifications set forth in this Section, then (1) Contractor shall be in breach of contract, (2) TPWD shall have the option to terminate the contract for cause without prior notice, and (3) in addition to any other rights or remedies available to TPWD under the contract, Contractor shall be responsible for all costs incurred by TPWD to obtain substitute services to replace the terminated Contract.~~

1.27 NAME CHANGES AND SALES:

If the Contractor changes its name or is sold to another entity, it must provide written notification to TPWD. The Contractor, in its notice, shall describe the circumstances of the name change or sale, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for the Contractor, the Contractor shall identify the new personnel and provide resumes to TPWD, if resumes were originally required by the Solicitation. TPWD may request other information about the change and its impact on the Contract and the Contractor shall supply the requested information within five (5) working days of receipt of the request.

TPWD may terminate the Contract due to a sale of or change to the Respondent that materially alters the Respondent's ability to perform under the Contract. The TPWD has the sole discretion to determine if termination is appropriate.

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1.28 CYBERSECURITY TRAINING:

Contractor shall ensure that any Contractor employee or subcontractor employee who has access to a state computer system or database shall complete a cybersecurity training program certified under Section 2054.519 of the Texas Government Code. Such training is required to occur during the contract term and the renewal period. Contractor shall provide Owner with verification of the completion of the requisite training.

1.29 DAMAGE TO GOVERNMENT PROPERTY:

In the event of loss, destruction or damage to any Agency or State of Texas property by Respondent or Respondent's employees, agents, subcontractors, and suppliers, Respondent shall be liable to Agency and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property. Respondent will reimburse Agency and the State of Texas for such property damage within ten (10) calendar days after Respondent's receipt of Agency's notice of amount due.

1.30 RESERVED

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PART 2 – EXECUTION

2.01 CONSTRUCTION SITE AND JOB CONDITIONS:

Any temporary connections, appurtenances or extensions for any utilities shall be provided by the Contractor at no cost to the Owner and removed from the premises at the conclusion of the contract. Contractor shall provide cellular telephone service at all times and shall keep Owner informed of telephone number.

A. Utilities:

~~1.~~ Water:

~~1.~~ TPWD water service is not available for Contractor use.

~~2.~~ Electric:

~~2.~~ TPWD Electrical power is available for Contractor to connect to.

~~3.~~ Internet / data:

~~3.~~ Due to TPWD IT security requirements, Contractor cannot access the internet through the facility's private network. Contractor will be responsible for obtaining internet service for their use during the project.

B. Project Identification: If Contractor desires to erect project signs of any size or type, Contractor must submit a proposed design to and obtain approval from TPWD prior to installation of any project signs. Project sign(s) may not include any references to TPWD or use TPWD's name, logo or other likeness.

C. Fire Protection: The Contractor shall take stringent precautions against fire. Open fires are not allowed unless approved in writing by Owner. Any fires that start or encroach on the Contractor's limits of construction must be immediately reported to the Site Manager.

2.02 SITE OPERATIONS:

It is the responsibility of the Contractor to maintain convenient access and egress to park facilities in a manner to be approved by the Owner. The Contractor shall also be responsible for public safety at the construction site. All temporary fencing, barricades, warning lights, signs, and flagmen shall be provided and maintained by Contractor as needed. The Contractor shall maintain security of construction sites.

END OF SECTION

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HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- ▶ **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- ▶ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- ▶ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- ▶ **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

If you are completing Method B (Attachment B) of the HSP, please provide all supporting documentation pertaining to the notifications of a minimum of three (3) Texas-certified HUBs and two (2) minority, women, or service-disabled veteran trade organizations or development centers for each subcontracting opportunity listed in Section 2, Item b. Such supporting documentation would include all e-mails, faxes, delivery receipts, confirmation receipts/pages, attachments, etc.

For questions regarding the HSP, please contact TPWD HUB Administration at 512-389-4784 or hub@tpwd.texas.gov.

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: _____ Bid Open Date: _____

(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)
- *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date <small>(mm/dd/yyyy)</small>
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Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

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Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded “Yes” to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method A (Attachment A)” for each of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmlsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____	Requisition #: _____
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IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If *Yes*, continue to SECTION B-4.)
- No / Not Applicable (If *No* or *Not Applicable*, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/passcmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____ State of Texas VID #: _____
 Point-of-Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____
 Point-of-Contact: _____ Phone #: _____
 Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,
 we must receive your bid response no later than _____ on _____
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: - Not Applicable

4. Bonding/Insurance Requirements: - Not Applicable

5. Location to review plans/specifications: - Not Applicable



Infrastructure HUB Subcontracting Opportunities

Date of HUB List: _____ Project/Contract Number: _____

Description:

In accordance with Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D, Division 1, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for Construction, Services (including Professional and Consulting Services), and Commodity procurements. The State of Texas Policy is to contract directly with HUBs or indirectly through subcontracting opportunities. Each Contractor/Vendor shall also make a good faith effort to utilize HUBs in subcontracting opportunities.

TPWD estimates the value of this contract to be \$ _____ and further sets the HUB subcontracting goal at _____ % of the contract's value.

(Subcontractor - A person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity as defined in Texas Government Code 2251.001.)

NOTE: The following list identifies potential subcontracting opportunities. You could have other opportunities or may self-perform some opportunities. You are not required to subcontract every potential subcontracting opportunity.

Class & Item Code: Trades/Disciplines/Major Supplies:

Class & Item Code: Trades/Disciplines/Major Supplies:

HUB LIST:

TPWD does not endorse, recommend or attest to the capabilities of any company or individual listed. The list is strictly provided as a convenience to respondents.

Respondents may also access a list of HUB subcontractors by referencing the above Class and Item codes in a Centralized Master Bidders List (CMBL) search at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>.

Comptroller HSP information: <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.

A few minority and women trade organizations and development centers are listed below. For a more complete list, please visit <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

National Association of Minority Contractors, Inc. – Greater Houston 1337 W. 43 rd St., Ste. B165 Houston, TX 77018 (832) 797-1842 phone execufirm1@yahoo.com email www.namctexas.org website	Texas Association of African American Chambers of Commerce 807 Brazos St., Ste. 710 Austin, TX 78701 (512) 535-5610 phone info@taaacc.org email www.taaacc.org website	Texas Association of Mexican American Chambers of Commerce 606 Main St. Buda, TX 78610 (512) 444-5727 phone president@tamacc.org email www.tamacc.org website
Asian Contractor Association 7600 Chevy Chase Dr., Ste. 300 Austin, TX 78752 (512) 926-5400 phone (512) 926-5410 fax asiancontractor@gmail.com email www.acta-austin.com website	Women’s Business Council - Southwest 5605 N. MacArthur Blvd., Ste. 220 Irving, TX 75038 (866) 451-5997 office (toll free) (817) 299-0949 fax info@wbcsouthwest.org email www.wbcsouthwest.org website	Women’s Business Enterprise Alliance 9800 Northwest Freeway, Ste. 120 Houston, TX 77092 (713) 681-9232 office (713) 681-9242 fax bids@wbea-texas.org email www.wbea-texas.org website

For information on the TPWD HUB program, assistance with completing forms, or to obtain HUB lists if web access is not possible, please contact the TPWD HUB staff at (512) 389-4784 or hub@tpwd.texas.gov.

EXHIBIT H

TEXAS PARKS AND WILDLIFE

PAYMENT BOND

STATE OF TEXAS

COUNTY OF _____

Project Number 1111304
Contract Number _____

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as **PRINCIPAL**,
and _____, as
SURETY(IES),

Surety Address: _____
Surety Phone: _____ Surety Fax: _____

are hereby held and firmly bound unto the State of Texas in the penal sum of: _____ Dollars
(\$_____)

for the payment, whereof, the said **PRINCIPAL** and **SURETY(IES)** bind themselves, their heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the **PRINCIPAL** entered into a certain contract dated _____, 20__, hereto attached, and made a part hereof, with the State of Texas, acting by and through the Texas Parks and Wildlife Department, to commence and complete certain public works described as: **1111304 Water System Development – New Well at Franklin Mountains State Park.**

NOW THEREFORE, the conditions of this obligation are such that, if the **PRINCIPAL** shall promptly make payment to all claimants as defined in TITLE 10, *TEXAS GOVERNMENT CODE*, CHAPTER 2253, as amended, supplying labor and materials in the prosecution of the work provided for in said contract and any and all duly authorized changes to said contract that may hereafter be made, notice of such changes to the **SURETY(IES)** being hereby waived, then, this obligation shall be null and void, otherwise it shall remain in full force and effect.

This bond is made and entered into solely for the protection of all claimants supplying labor and materials in the prosecution of the work provided for in said contract, and all such claimants shall have a direct right to action under the bond as provided in TITLE 10, *TEXAS GOVERNMENT CODE*, CHAPTER 2253, as amended.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this _____ day of _____, 20__, the name and corporation seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL

BY _____

SURETY

BY _____

EXHIBIT I

TEXAS PARKS AND WILDLIFE

PERFORMANCE BOND

STATE OF TEXAS

Project Number 1111304

COUNTY OF _____

Contract Number _____

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as PRINCIPAL, and _____, as SURETY(IES),

Surety Address: _____
Surety Phone: _____ Surety Fax: _____

are hereby held and firmly bound unto the State of Texas in the penal sum of:

_____ Dollars (\$_____)

for the payment, whereof, the said PRINCIPAL and SURETY(IES) bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the PRINCIPAL entered into a certain contract dated _____, 20___, hereto attached, and made a part hereof, with the State of Texas, acting by and through the Texas Parks and Wildlife Department, to commence and complete certain public works described as: 1111304 Water System Development – New Well at Franklin Mountains State Park.

NOW THEREFORE, the conditions of this obligation are such that, if the PRINCIPAL shall faithfully perform the contract in accordance with the plans, specifications, and contract documents, and as provided in TITLE 10, TEXAS GOVERNMENT CODE, CHAPTER 2253 shall fully indemnify and save harmless the State of Texas from all cost and damage which the State of Texas may suffer by reason of the PRINCIPAL'S default or failure to do so and shall fully reimburse and repay the State of Texas all outlay and expense which the State of Texas may incur in making good any such default, then obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided further, that if any legal action be filed upon this bond, venue shall lie in Travis County, Texas and that the said surety(ies) for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition, to the items of the Contract or to the work or to the Specifications.

In the event PRINCIPAL is in default under the contract as defined herein, SURETY(IES) will within fifteen (15) days of determination of such default take over and assume completion of said contract and become entitled to the payment of the balance of the contract price.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this _____ day of _____, 20___, the name and corporation seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL

SURETY

BY _____

BY _____

EXHIBIT J

TEXAS PARKS AND WILDLIFE

PREVAILING WAGE RATE DETERMINATION INFORMATION

Chapter 2258, Texas Government Code, Title 10 requires that state agencies, (including universities), cities, counties, independent school districts, and all other political subdivisions that engage in public works construction projects produce and include prevailing wage rate determinations in the project bidding and contract documents.

Chapter 2258 requires that the contractor who is awarded a contract by a public body and a contractor's subcontractor shall pay not less than the rates determined by such state agencies to workers employed for the execution of such work. Pursuant to Chapter 2258, Texas Parks and Wildlife has ascertained the following wages to be paid for the various classifications of workers, in the locality of this project. In determining these wages, TPWD has utilized the Prevailing Wage Rates as determined by the U.S. DOL in accordance with the Davis-Bacon Act.

"General Decision Number: TX20240035 03/01/2024

Superseded General Decision Number: TX20230035

State: Texas

Construction Type: Heavy

County: El Paso County in Texas.

HEAVY CONSTRUCTION, (INCLUDING WATER/SEWER LINES)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658.

Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

| If the contract is entered | . Executive Order 14026
|
| into on or after January 30, | generally applies to the
|
| 2022, or the contract is | contract.
|

|renewed or extended (e.g., an |. The contractor must pay
|option is exercised) on or | all covered workers at
|after January 30, 2022: | least \$17.20 per hour (or
| | the applicable wage rate
| | listed on this wage
| | determination, if it is
| | higher) for all hours
| | spent performing on the
| | contract in 2024.

|If the contract was awarded on| . Executive Order 13658
|or between January 1, 2015 and| generally applies to the
|January 29, 2022, and the | contract.

|contract is not renewed or |. The contractor must pay
all| covered workers at least
|extended on or after January | \$12.90 per hour (or the
|30, 2022: | applicable wage rate
| | listed| on this wage
| | determination, | if it is higher) for all
| | | hours spent performing on
| | | that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a

conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024
1	03/01/2024

* ELEC0583-003 01/01/2024

HEAVY CONSTRUCTION (INCLUDING WATER/SEWER LINES)

	Rates	Fringes
ELECTRICIAN.....	\$ 25.50	5.25%+7.92

* SUTX2005-015 05/13/2005

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 12.21 **	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 9.29 **	0.00
Laborers:		
Common.....	\$ 7.96 **	0.00
Pipelayer.....	\$ 8.48 **	0.00
POWER EQUIPMENT OPERATOR:		
Backhoe.....	\$ 11.57 **	0.00
Front End Loader.....	\$ 10.43 **	0.00
Grader.....	\$ 11.19 **	0.00
TRUCK DRIVER.....	\$ 9.17 **	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the

minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local),

a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or

""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of

the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that

no one rate prevailed for this classification in the survey and

the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates

the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007

in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a

new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator

(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

EXHIBIT K

TEXAS PARKS AND WILDLIFE

CONTRACTOR'S PROGRESS PAYMENT AFFIDAVIT

STATE OF TEXAS

PROJECT NUMBER 1111304

COUNTY OF _____

CONTRACT NUMBER _____

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared the Affiant named below who being duly sworn, on oath, says that he/she is a duly authorized representative of the company named below; and that all terms of the Contract for the completion of certain public works described as Project 1111304 - Water System Development - New Well at Franklin Mountains State Park, El Paso County, Texas have been satisfactorily completed to the extent indicated on the attached voucher and that ALL sums of money due for payrolls, bills for material and equipment, and other indebtedness connected with the Work for which OWNER or its property might in any way be responsible, to the best of his/her knowledge and belief have been paid or will be paid or otherwise satisfied within ten days after receipt of the requested payment from the OWNER, or within the period of time required by Title 10, Texas Government Code, Section 2251.022.

Table with 3 columns: Affiant, Title, Company

Affiant agrees to indemnify and hold Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project. Affiant further agrees to indemnify and hold harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project.

Payments to subcontractors for labor and/or materials which are pending or disputed as of the date hereof are:

Table with 3 columns: Individual or Company Name, Mailing Address, Amount Owed

INSTRUCTIONS: Affidavit must be signed by an individual owner, or partner in a partnership, or by a person authorized by bylaws or Board of Directors to sign for a corporation. If Contractor is a joint venture or partnership of individuals, either may sign, but if a joint venture in which a corporation is a party, separate affidavits must be executed by each corporation and by each individual owner or partnership.

Affiant Signature

Sworn to and subscribed before this ___ day of ___, 20__

(SEAL)

Notary Public in and for _____ County, TX

EXHIBIT L

CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

STATE OF TEXAS

PROJECT NUMBER 1111304

COUNTY OF _____

CONTRACT NUMBER _____

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared the Affiant named below who being duly sworn, on oath, says that he/she is a duly authorized representative of the company named below; and that all terms of the Contract for the completion of certain public works described as **Project 1111304 – Water System Development – New Well at Franklin Mountains State Park, El Paso County, Texas** have been satisfactorily completed and that ALL sums of money for payrolls, bills for material and equipment, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible, to the best of his/her knowledge and belief, have been paid or will be paid or otherwise satisfied within ten days after receipt of final payment from the Owner, or within the period of time required by Title 10, Texas Government Code, Section 2251.022.

Affiant	Title	Company

Payments not made in full at the date of this affidavit are listed below. Affiant hereby waives all claims against the Owner. (List any exceptions):

Affiant agrees to indemnify and hold Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project. Affiant further agrees to indemnify and hold harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project.

Final payments to subcontractors for labor and/or materials which are pending or disputed as of the date hereof are:

<u>Individual or Company Name</u>	<u>Mailing Address</u>	<u>Amount Owed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

INSTRUCTIONS: Affidavit must be signed by an individual owner, or partner in a partnership, or by a person authorized by bylaws or Board of Directors to sign for a corporation. If Contractor is a joint venture or partnership of individuals, either may sign, but if a joint venture in which a corporation is a party, separate affidavits must be executed by each corporation and by each individual owner or partnership. In the event subcontractors, laborers, or materialmen have not been paid in full, Contractor shall list hereon the amount owed and the name and address of each subcontractor, laborer, or materialman to whom such payment is owed. Add additional pages if required.

Affiant Signature

Sworn to and subscribed before this _____ day of _____, 20_____

(SEAL)

Notary Public in and for _____ County, TX

EXHIBIT M

TEXAS PARKS AND WILDLIFE

CONSENT OF SURETY COMPANY TO FINAL PAYMENT

PROJECT 1111304
TITLE OF PROJECT Water System Development - New Well
PROJECT LOCATION Franklin Mountains State Park
CONTRACT NO
CONTRACT DATE

OWNER: Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

CONTRACTOR: Name
Address
City, State, Zip Code

SURETY COMPANY: Name
Address
City, State, Zip Code

on bond of, Contractor, hereby approves of the final payment by Owner to Contractor on the above Contract and agrees that final payment to the Contractor shall not relieve Surety Company of any of its obligations to Owner as set forth in said Surety Company's bond.

IN WITNESS WHEREOF, Surety Company has hereunto set its hand this ___ day of ___, 20___

SURETY COMPANY:

By
Signature
Printed Name
Title

EXHIBIT N

NON-USE OF ASBESTOS CONTAINING MATERIALS AFFIDAVIT - CONTRACTOR

STATE OF TEXAS §
COUNTY OF §

Project Name: Water System Development – New Well at Franklin Mountains State Park
Project Number: 1111304

By the signature below, the signatory for the Contractor certifies that neither he nor the firm, corporation, partnership or institution represented by the signatory or anyone acting for the firm providing Construction Services for this project, including Subcontractors, have utilized materials, procedures or processes that knowingly or intentionally contain asbestos materials.

Signature:
Printed Name:
Title:
Company:
Date:

State of Texas
County of

Sworn to and subscribed before me on the day of , 20 by
(name/signature of signer) the undersigned authority on behalf of said Contractor.

(Personalized Seal)

Notary Public's Signature
My commission expires: